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Working Group on the issue of human rights and transnational corporations and other business enterprises

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, submitted pursuant to Human Rights Council resolutions 17/4 and 35/7.

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The report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Summary

In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises takes stock of business and government action to advance the implementation of corporate human rights due diligence as set out in the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. It highlights emerging good practices that should be built upon and scaled up in order to address gaps in current practice.

I. Introduction

A. Background

1. The unanimous endorsement of the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework by the Human Rights Council in 2011 represented a watershed moment in efforts to address adverse impacts on people resulting from business activities in all sectors. They provided for the first time a globally recognized and authoritative framework for the respective duties and responsibilities of Governments and business enterprises to prevent and address such impacts and have since become a common reference point for all stakeholders.

2. The Guiding Principles clarify that business enterprises have an independent responsibility to respect human rights and that in order to do so they are required to exercise human rights due diligence. Human rights due diligence refers to the processes that all business enterprises should undertake to identify, prevent, mitigate and account for how they address potential and actual impacts on human rights caused by or contributed to through their own activities, or directly linked to their operations, products or services by their business relationships.

3. Since 2011, a range of business enterprises have taken steps to implement human rights due diligence, and good practices have been building up. However, considerable efforts by different actors are needed to make human rights due diligence a part of standard business practice.

B. Aims and objectives

4. In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises sets out to highlight: (a) key features of human rights due diligence; (b) current gaps and challenges; (c) emerging good practices; and (d) how key stakeholders — States and the investment community, in particular — can contribute to the scaling-up of effective human rights due diligence.

5. It also seeks to contribute to convergence around the due diligence concept of the Guiding Principles among international efforts to promote corporate responsibility. In that regard, the recent *OECD Due Diligence Guidance for Responsible Business Conduct* of the Organization for Economic Cooperation and Development (OECD) is another important reference.

C. Methodology, scope and limitations

6. In preparing its report, the Working Group benefited from written submissions by interested parties in response to an open call for input; interviews with a number of experts; and consultations with business organizations, civil society organizations, States and other stakeholders convened in Bangkok, Beijing, Buenos Aires, Geneva, London, Paris, Santiago, Washington, D.C. and Zurich.[1]

7. The scope of the report is the human rights due diligence standard set out in the second pillar of the Guiding Principles — the corporate responsibility to respect

[1] The submissions are available at https://www.ohchr.org/EN/Issues/Business/Pages/Submissions2018.aspx. A thematic page can be found at https://www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDueDiligence.aspx.

human rights.[2] It applies to all business enterprises, regardless of size, sector, operational context, ownership and structure. The report also addresses the role of States, as outlined in the first and third pillars of the Guiding Principles — the State duty to protect human rights and the need to ensure access to remedy for victims.

8. The Working Group recognizes that more work is needed to evaluate the actual impact of emerging practices on the ground. Going forward, it will be essential to monitor the effectiveness of and lessons learned from the approaches described in the present report.

9. The subject of human rights due diligence in practice covers a vast range of issues (as business activities can potentially have an impact on all internationally recognized human rights) and activities (as due diligence involves different steps and processes). The present report merely scratches the surface. Two companion notes have been developed to elaborate on key concepts and lessons learned from business practice.[3]

II. Human rights due diligence: key features and why it matters

A. Key features

10. Human rights due diligence provides the backbone of the day-to-day activities of a business enterprise in translating into practice its responsibility to respect human rights. It is a way for the enterprise to proactively manage the potential and actual risks of adverse impacts on the rights and dignity of people. While often referred to as the human rights due diligence process, in reality it involves a bundle of interrelated processes, which should include the following four core components:[4]

(a) Identifying and assessing actual or potential adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;

(b) Integrating findings from impact assessments across relevant functions and company processes and taking appropriate action according to its involvement in the impact. More specifically, if the enterprise is causing the impact, it should take steps to cease or prevent it; if it is contributing to the impact, it should take steps to cease or prevent its contribution and use leverage to mitigate the remaining impact; if it has not contributed to the impact, but that impact is directly linked to its operations, products or services by its business relationships, it should take steps to gain and use leverage to prevent and mitigate the impact, to the greatest extent possible;

(c) Tracking the effectiveness of measures and processes to address adverse human rights impacts in order to know if they are working;

(d) Communicating on how impacts are being addressed and showing stakeholders — in particular affected stakeholders — that there are adequate policies and processes in place to implement respect for human rights in practice.

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[2] Further explained in *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

[3] For the companion notes (forthcoming), see https://www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDueDiligence.aspx.

[4] These are elaborated on in Guiding Principles 17 to 21 and in the interpretive guide of OHCHR.

11. The human rights due diligence processes also need to be complemented by (a) appropriate policies setting out the commitment of business enterprises to respect human rights and efforts to embed human rights due diligence across levels and functions; and (b) active engagement in the remediation of adverse human rights impacts caused or contributed to by the enterprise.

12. Where a business enterprise identifies that it has caused or contributed to an adverse impact, a key part of its responsibility is to provide for or cooperate in the remediation of such impacts through legitimate processes, which may involve State-based judicial and non-judicial mechanisms, as well as non-State-based grievance mechanisms. Business enterprises should establish or participate in effective operational-level grievance mechanisms, which should meet certain core criteria set out in Guiding Principle 31. Such mechanisms are critical to effective due diligence, reinforcing prevention by helping an enterprise to identify concerns and systemic problems and address grievances at an early stage, thereby preventing grievances from escalating.

13. Descriptive characteristics of human rights due diligence include that it should:

(a) Be undertaken first and foremost to prevent adverse human rights impacts;

(b) Be commensurate with the severity and likelihood of the adverse impact (the higher the likelihood and severity of an adverse impact, the more extensive the due diligence should be) and be tailored to specific risks and how they affect different groups (such as applying a gender lens or taking into account how actual or potential adverse impacts may differ for or may be specific to women) and adjusting actions accordingly;

(c) Be ongoing, in recognition of the fact that the risks to human rights may change over time as operations and operating contexts evolve.

14. Other key considerations include the need to ensure that the due diligence process:[5]

(a) Is not carried out or required as a way to shift responsibilities — the expectation that all business enterprises carry out human rights due diligence does not shift responsibilities from Governments to enterprises, or from the enterprises causing or contributing to adverse impacts to the enterprises that are directly linked to adverse impacts through their business relationships;

(b) Is conducted in accordance with the principles of internationally recognized human rights, which may help enterprises to honour international human rights standards when national legal requirements fall below such standards;

(c) Is proportionate to the size of the enterprise, the risk of the severe impacts and the nature and context of the business operations, for example, in high-risk operating environments, such as conflict-affected areas, business enterprises need to exercise heightened human rights due diligence;

(d) Is adapted to the challenges of managing business relationships, for example with suppliers, join-venture partners or government entities, and takes into account a range of possible measures — both unilateral and collective — for enhancing leverage to address the adverse impacts directly linked to the enterprise's operations, products or services by its business relationships;

(e) Is informed by meaningful stakeholder engagement throughout the process, in particular with affected stakeholders;

[5] These characteristics correspond with "the essentials" included in the *OECD Due Diligence Guidance for Responsible Business Conduct*, pp. 16–19.

(f) Involves ongoing communication on identified potential and actual impacts and how they are being addressed, reflecting the nature of the impacts and being accessible to its intended audiences, while not posing risks to affected stakeholders, personnel or the legitimate requirements of commercial confidentiality.

15. Further key considerations for each of the main components of the due diligence process are outlined in companion note I[4] to the present report, as well as how due diligence is being interpreted for specific sectors and types of actors. The connection with concepts of legal liability is also addressed,[6] as human rights due diligence, when done properly, is increasingly relevant for strengthening legal risk management. One key difference between human rights due diligence and traditional corporate due diligence — typically transactional due diligence or compliance monitoring — is that the former emphasizes risks to people whereas the latter addresses risks that are a concern for business.

B. Why it matters

16. The essence of the Guiding Principles is the distinction made between the State duty to protect and the business responsibility to respect human rights. Due diligence is the primary expectation of behaviour for any business with respect to its responsibilities concerning the adverse impacts on human rights that it causes, contributes to or to which it is directly linked.

17. Due diligence is therefore fundamental as a way of informing what any business enterprise should do to meet its responsibility to respect human rights. It goes well beyond the idea of doing no harm. The concept of corporate respect, as set forth in the Guiding Principles, requires proactive steps to prevent and address harmful impacts. The prevention of adverse impacts on people is the main purpose of human rights due diligence.

18. In a wider context, if human rights and dignity are not upheld in business activities, the positive contributions that businesses may otherwise make towards sustainable development will be undermined. The Working Group and others have emphasized this connection and argued that the most significant contribution most business enterprises can make towards sustainable development is to prevent and address adverse impacts on human rights through effective human rights due diligence.[7]

19. The responsibility to carry out human rights due diligence applies regardless of any "business case" argument. Failure to conduct adequate diligence on risks to people will often have not only a human cost, but may also come back to haunt the business.[8]

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[6] Based on a report by OHCHR (A/HRC/38/20/Add.2).

[7] See https://www.ohchr.org/EN/Issues/Business/Pages/SustainableDevelopmentGoals.aspx, https://www.business-humanrights.org/en/civil-society-urges-businesses-govts-to-put-human-rights-at-core-of-implementation-of-un-sustainable-development-goals#c162595 and https://www.shiftproject.org/resources/viewpoints/sustainable-development-goals-corporate-respect-human-rights/.

[8] See, for example, Rachel Davis and Daniel Franks, *Costs of Company-Community Conflict in the Extractive Sector*, Corporate Social Responsibility Initiative Report No. 66 (Cambridge, Massachusetts, Harvard Kennedy School, 2014).

III. Current trends and challenges

A. Increasing uptake in policy frameworks

20. Since the endorsement of the Guiding Principles by the Human Rights Council in 2011, corporate human rights due diligence has become a norm of expected conduct. The concept was fully integrated into the OECD Guidelines for Multinational Enterprises. The recent *OECD Due Diligence Guidance for Responsible Business Conduct*, endorsed by all 48 adhering Governments, will provide further impetus to solidifying the norm. It was incorporated into the revised Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, of the International Labour Organization, and has been reiterated by leaders at the Group of Seven and Group of 20 summits. It is also reflected in general human rights due diligence legislation (France, European Union) or emerging legislation (Switzerland), as well as in requirements for mandatory disclosure of risks of modern slavery in supply chains (in the United Kingdom of Great Britain and Northern Ireland, in the United States of America (California) and, forthcoming, in Australia) — legal developments which have been characterized as "the beginning of a paradigm shift".[9]

21. Policy frameworks in emerging markets have also been inspired by the human rights due diligence concept of the Guiding Principles, such as in China and Indonesia. In the 20 national action plans on business and human rights that have been issued to date, Governments have reaffirmed the expectation that business enterprises in their territories or jurisdictions exercise human rights due diligence.[10]

22. Besides Governments, a growing number of investors are asking business enterprises how they manage their risks to human rights.[11] Also, among business lawyers there is a growing recognition that they should advise corporate clients to exercise human rights due diligence. The International Bar Association (IBA) notes that "businesses are increasingly expecting their preferred external counsel to act as partners in the identification or management of human rights risks".[12] In the world of sports, human rights due diligence processes have become an integral part of the selection process for future world cups of the Fédération Internationale de Football Association (FIFA)[13] and for host-city contract operational requirements of the Olympic Games.[14]

23. Among business enterprises, a small but growing number of large corporations in different sectors have issued policy statements expressing their commitment to respect human rights in line with the Guiding Principles. Several such enterprises are developing practices that involve ongoing learning and innovation around the various

[9] Amnesty International and Business and Human Rights Resource Centre, *Creating a Paradigm Shift: Legal Solutions to Improve Access to Remedy for Corporate Human Rights Abuse*.

[10] See the Working Group's compilation of such references, https://www.ohchr.org/Documents/Issues/Business/Session18/CompilationNAPReferencesToDi%20ligence.pdf.

[11] See the submission by the Investor Alliance for Human Rights, https://www.ohchr.org/Documents/Issues/Business/WGSubmissions/2018/InvestorAlliance.pdf. An example of the expectations of institutional investors is the document on human rights expectations of Norges Bank Investment Management, which manages the pension fund of the Government of Norway, https://www.nbim.no/en/responsibility/risk-management/human-rights/.

[12] International Bar Association, "IBA practical guide on business and human rights for business lawyers".

[13] FIFA Human Rights Advisory Board, "Update statement from the FIFA Human Rights Advisory Board", May 2018.

[14] See https://www.olympic.org/news/ioc-reinforces-its-commitment-to-transparency-and-reform-by-publishing-host-city-contract.

components of human rights due diligence to prevent and address impacts across operations and relationships, including in supply chains.[15]

B. Gaps and challenges in current practice

24. While the global diffusion of human rights due diligence as a norm of conduct in various policy frameworks is notable, much remains to be done to translate the norm into actual practice. One of the challenges to making robust assessments of progress is that comprehensive and systematic data on how the majority of the world's business enterprises understand and manage their actual and potential adverse impacts on human rights remain scarce. Input provided to the Working Group by experts from different backgrounds in preparation for the present report, as well as findings from several recent human rights benchmarks and assessments[16] nevertheless shed light on the current situation. Different types of gaps and challenges emerge, both with regard to business and State practice as well as the wider environment.

1. Business practice

25. According to human rights benchmarking and rating assessments, the majority of companies covered by the assessments do not demonstrate practices that meet the requirements set by the Guiding Principles. This may indicate that risks to workers and communities are not being managed adequately in spite of growing awareness and commitments. One of the indicators is the lack of focus on human rights risks in most current reporting, which is at best a result of inadequate communication or at worst a reflection of insufficient understanding and management of risks to human rights. In general, there is much room for improvement regarding transparency on the concrete details of risk assessments and human rights due diligence processes. Often human rights due diligence is not understood properly, resulting in:

(a) Misconstruction of risk, namely, when companies operate with a mindset of risk to the business and not risk to rights holders, such as workers, communities and consumers. Related to that, there is a lack of understanding on how better human rights due diligence will also improve the overall risk management approach. Reluctance or even pushback from traditionally oriented legal counsel, both in-house and external, fearing disclosure is a key obstacle to uptake by companies;

(b) Failure to address the most significant risks to human rights first and focusing instead on risks that may be relatively easy to address or that are getting attention in a given context, such as modern slavery or diversity, rather than doing an objective assessment of the most significant and likely risks to people affected by the activities and business relationships of the enterprise;

(c) Too many human rights impact assessments done as exercises to tick the box, without meaningful engagement with stakeholders, including engagement with vulnerable or at-risk groups and critical voices such as human rights defenders;

(d) Most business enterprises still being mostly reactive, instead of proactively trying to identify potential human rights impacts before they arise,

[15] See Norton Rose Fulbright and British Institute of International and Comparative Law, *Making Sense of Managing Human Rights Issues in Supply Chains: 2018 Report and Analysis*.

[16] See Corporate Human Rights Benchmark; Guiding Principles Reporting Framework database; KnowtheChain; Ranking Digital Rights; Responsible Mining Index; and assessments in 2018 by Vigeo Eiris, the Sustainability Yearbook 2018 by RobecoSAM and the Principles for Responsible Investment. See companion note II for more details. There is also a growing academic literature on corporate human rights due diligence. See, for example, the *Business and Human Rights Journal* and the *European Journal of International Law*.

including through early-stage meaningful engagement with potentially affected stakeholders.

26. Performance seems to be particularly weak on the "taking action" and "tracking of responses" components of human rights due diligence set out in the Guiding Principles. Similarly, connections between human rights due diligence and the remediation of actual impacts are not being made in practice. The inadequate integration of a gender lens is a notable gap.[17]

27. A common observation is that beyond the small group of early adopters — mostly large corporations based mainly, but not exclusively, in some Western markets — there is a general lack of knowledge and understanding of the corporate responsibility to respect human rights, especially among smaller companies. In addition, the experience gained from national-level dialogues indicates that many business enterprises, in particular small and medium-sized enterprises, view due diligence expectations as a burden.

28. Translating corporate policies into local contexts, for example in subsidiaries, is a challenge across sectors. There is typically a disconnect between the corporate level and implementation on the ground as well as gaps in internal alignment between functions and incentive structures. An observation in this regard is that companies are prioritizing general training, so that they can "tick the box" on human rights training, without tailoring those trainings to specific functions.

29. An apparent gap in current supply chain management is that human rights due diligence tends to be limited to tier-one companies. Efforts to go beyond tier one tend to happen only when the issue has been brought to light by the media or non-governmental organizations (NGOs). Few companies appear to be asking tier-one suppliers to demonstrate that they — and their suppliers in the tiers below — fulfil the responsibility to respect human rights by requiring assessments of the risks to and impacts on human rights. Practices in place before the creation of the Guiding Principles are still common, for example, situations in which companies typically ask suppliers to meet predefined performance criteria in relation to a limited set of human rights, mostly labour rights. However, there have been some positive developments in terms of:

(a) More meaningful collaborative approaches to joint leveraging efforts;

(b) Efforts to trace impacts beyond tier one, such as in mineral supply chains,[18] mostly through industry or multi-stakeholder platforms.

30. In the context of the sustainable development agenda, there is a risk that corporate engagement on the Sustainable Development Goals is being conflated with human rights due diligence. Overemphasis on business opportunities overshadows the understanding that the most significant contribution the majority of business enterprises can make to realizing the Goals is to respect human rights.

2. Government practice

31. A lack of government leadership in addressing governance gaps remains the biggest challenge. A fundamental issue is that host Governments are not fulfilling their duty to protect human rights, either failing to pass legislation that meets international human rights and labour standards, passing legislation that is inconsistent or failing to enforce legislation that would protect workers and affected

[17] Two broad exceptions appear to be: (a) when a business enterprise faces a risk of being linked to sexual violence or harassment, it reacts and tries to adopt a gender lens; (b) gender is being used as part of inclusiveness and diversity, for example, in the workforce or on boards.

[18] See http://mneguidelines.oecd.org/mining.htm.

communities. A case in point is the situation for the rights of workers[19] as well as the limited capacity and effectiveness of labour inspection authorities in many parts of the world.

32. While some home Governments have introduced due diligence or disclosure legislation, such efforts also remain patchy. Related to that, even as civil society organizations and many business enterprises welcome legislation requiring disclosure on modern slavery and risks to human rights, there is a lack of harmonization and coordination between Governments pursuing this agenda.

33. Business and civil society experts alike also note that Governments are not providing enough guidance on human rights due diligence and support tailored to national business audiences, including small and medium-sized enterprises.

34. A lack of policy coherence in government practice is part of the overall picture, and Governments are not leading by example in their own roles as economic actors. This limits their capacity to push business enterprises to put human rights due diligence into practice. The Working Group has highlighted that State-owned enterprises — which are expected to lead by example — are generally lagging behind in adopting human rights due diligence approaches.[20] Similarly, there is generally weak integration of human rights due diligence into the practice and client requirements of export credit agencies, as highlighted by the Working Group in a recent report,[21] and public procurers.[22]

3. Systemic issues and market failures

35. A number of the risks to human rights in which business enterprises may be involved include child labour, forced labour, discrimination against women, minorities, migrants and others in the workplace and community, lack of living wages, lack of participation of affected workers, community members and indigenous peoples, forced resettlements or lack of access to remedy. These risks concern systemic issues and are in many contexts linked to root causes or fundamental development issues, such as poverty, corruption and weak rule of law. They represent challenges that individual business enterprises cannot solve on their own.

36. Other challenges for expanding the uptake of human rights due diligence by businesses may be categorized as market failure issues, such as:

(a) The "first-mover challenge", in which business enterprises that are transparent about risks and challenges are criticized for not doing enough whereas less responsible competitors go below the radar of NGOs and journalists. In some cases, NGOs and journalists expect too much of companies that are "merely" linked to the human rights abuse as opposed to the enterprise or government agency that is causing the abuse;

(b) Lack of available expertise on the Guiding Principles among the majority of consultancy firms advising on "corporate social responsibility" and lack of integration of business and human rights into the core advisory services of corporate law firms;

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[19] See, for example, the Global Rights Index of the International Trade Union Confederation.

[20] See the Working Group report A/HRC/32/45, of which a summary is available at https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Documents/ExSummary-WGBHR-SOE_report-HRC32.pdf.

[21] See A/HRC/38/48, of which a summary is available at https://www.ohchr.org/Documents/Issues/Business/ExecutiveSummaryReportEconomicDiplomacy.pdf.

[22] See Claire Methven O'Brien, Amol Mehra and Nicole Vander Meulen, *Public Procurement and Human Rights: A Survey of Twenty Jurisdictions* (International Learning Lab on Public Procurement and Human Rights, 2016).

(c) Insufficient incentive structures for addressing impacts on people as there is currently a lack of systematic mechanisms for investors, public agencies interacting with the private sector and regulators to reward good practices. While Governments and investors are increasingly putting a price on environmental impacts, they are lagging behind in implementing similar approaches for impacts on people;

(d) Lack of common understanding about which metrics and indicators to use to track and evaluate performance, both within companies and by other stakeholders, such as investors. The consequences may be that companies gather and publish information that gives "little insight into how their business actually affects the basic dignity and welfare of people. And markets are left rewarding often poor or inadequate behaviors, while leading practice can go unrecognized and under-supported".[23]

IV. Going forward: building on good practices and addressing market and governance failures

A. Lessons learned for businesses: road maps exist for getting started

37. A key lesson from assessments such as the Corporate Human Rights Benchmark and analysis available from the Guiding Principles Reporting Framework database[24] is that in spite of slow progress overall, effective due diligence can be done in practice. There are a number of concrete examples that may provide a starting point for a wider group of companies. This, together with the development of numerous tools and resources for businesses in recent years, means that business enterprises can no longer cite a lack of knowledge as an excuse for not getting started with human rights due diligence.

38. In carrying out its research for the current report, the Working Group sought to tap into the experiences of early adopters and unpack aspects of the process in order to develop a human rights due diligence approach, including on how to get started, the journey of implementing the process and key milestones. The findings are presented in companion note II.[4]

39. While the human rights due diligence process of an individual business enterprise needs to be tailored to its particular situation and risk profile, depending on sector, operating contexts and business model, successful strategies for getting started look surprisingly similar across sectors. Experience has shown that when there is a commitment from top executives and integration across corporate functions, change is possible. Organizational change takes time, however, and involves processes of continuous improvement and learning by doing.

40. Even among early adopters of human rights due diligence across the enterprise, it is acknowledged that the journey is ongoing. When working with subsidiaries in assessing impacts, or when working with suppliers or in other business relationships — especially when many tiers are involved and when working in complex environments — progress may be slow. However, committed engagement over time pays off in terms of better prevention and trust among stakeholders.

41. Business lawyers — both in-house counsel and external firms — have a unique position for shaping the path an enterprise may take. Often, they are seen as one of

[23] Caroline Rees, "The way businesses' social performance gets measured isn't working", Shift, February 2018.

[24] Supported by a coalition of 87 investors representing $5.3 trillion in assets under management. See https://www.ungpreporting.org/.

the main obstacles to adopting effective human rights due diligence, with a traditional narrow focus on legal risk. However, some bar associations, large law firms and in-house counsel endorse the Guiding Principles and acknowledge that human rights due diligence should be a core part of the advice provided by a wise counsellor. The need for such a change in mindset among mainstream business lawyers is elaborated in companion note II.[4]

B. Good practices

42. Human rights due diligence is an art more than a science, as it needs to be tailored to the particular situation of a business enterprise. Yet, it can be put into practice, as emerging approaches clearly demonstrate.

43. The fundamental change that needs to happen is for a business enterprise to integrate into its operations a human rights lens that takes into account potential and actual adverse impacts on people, with a view to preventing and addressing such impacts. This needs to be done with due consideration to all the different components of the human rights due diligence process (assessing impacts, integrating and acting upon findings, tracking effectiveness of responses, communicating on how impacts are addressed) and remediation efforts.

44. Cross-cutting aspects of good practice identified by the Working Group are compiled in companion note II[4] and summarized below.

1. Stakeholder engagement

45. While there are big gaps in current practice, a number of aspects of good practice are increasingly becoming better understood. Key aspects include:

(a) *Engaging with and enabling critical voices to raise concerns about potential and actual impacts*. Engaging constructively and in good faith with critical voices, such as human rights defenders, trade union representatives and community members, helps to identify the risks to human rights. Business enterprises also need to consider, as part of their human rights due diligence, the risks that such critical voices may face.[25] The Guiding Principles provide a framework for mutual constructive engagement;

(b) *Engaging directly with affected stakeholders in good faith*. Sometimes engaging with stakeholders on the ground may not be possible owing to security concerns and practical barriers, in which case credible NGOs can be useful proxies. However, consulting directly with affected workers and communities provides the best way to identify concerns and bring forward adequate actions and can help to strengthen preventive, mitigation and remediation efforts. A critical aspect is the need to take into account the specific risks affecting different groups, including integrating gender-sensitive approaches.[26] Operational-level grievance mechanisms that meet the effectiveness criteria of the Guiding Principles provide a key measure for engaging directly with affected individuals and reinforcing prevention. Support for community-based human rights impact assessments can strengthen engagement and build trust;

(c) *Collaborating with NGOs and unions in formal partnerships to identify and address potential and actual impacts*. Entering into partnerships with independent and critical organizations can help to strengthen processes to identify

[25] The Working Group is developing guidance on the implications of the Guiding Principles for engaging and safeguarding the rights of human rights defenders. See https://www.ohchr.org/EN/Issues/Business/Pages/HRDefendersCivicSpace.aspx.

[26] See the work of the Working Group on gender and the Guiding Principles, https://www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx.

and address human rights impacts. Successful models that should be used more widely include collaboration between food and beverage companies and NGOs, worker-driven partnerships[27] and global framework agreements between international trade unions and business enterprises.[28]

2. Transparency and meaningful reporting

46. Disclosure on human rights due diligence is an area in which there is a significant gap between leading practice and the large majority of businesses. Reluctance to disclose information about human rights risks and mitigation efforts seems to be due in large part to perceived legal risks. However, good practices are emerging, spurred by benchmarking initiatives, investor pressure, legal developments and a wider trend towards transparency in corporate responsibility.

47. Core aspects of good practice include:

(a) *Clear recognition of what the risks to people are*. When conducting stand-alone human rights impact assessments for particular projects or operations or in high-risk contexts, making them publicly available is a good practice;[29]

(b) *Accurate descriptions of the due diligence processes that the business enterprise has in place to address specific risks*. Indicators of good practice may be the number of affiliates that conduct regular human rights impact assessments; the percentage of tier-one businesses that have committed to implementing the Guiding Principles and require the same from enterprises with which they have business relationships; the monitoring of identified risks to human rights, which may include auditing, especially when identifying the risks of severe impacts; clear statements on how business enterprises understand their responsibility, as opposed to trying to shift responsibilities; and evidence that resources are being spent on identifying and fixing problems.

3. Beyond tier one

48. Managing the risks to and impacts on human rights in supply chains can be extremely complex. Supply chains can involve hundreds or thousands of suppliers and several tiers, with suppliers typically providing services to more than one sector. Yet, the Guiding Principles clarify that the responsibility of a business enterprise to respect human rights relates to the adverse human rights impacts to which its operations, products and services are linked in all tiers of its value chain. Moreover, each business enterprise should ensure that its own practices, for example, selling defective parts or unhealthy ingredients, irresponsible purchasing practices, or low-cost, fast-delivery business models, do not contribute to adverse human rights impacts caused by entities in the value chain.

49. One approach for going beyond tier one involves "cascading" requirements down to the suppliers of suppliers, and can be most effective when pursued using incentives, with constructive engagement and support for aspects such as:

- Risk assessments
- Audits
- Training and capacity-building
- Establishment of grievance mechanisms

[27] See, for example, http://www.fairfoodprogram.org/.

[28] See http://www.industriall-union.org/issues/pages/global-framework-agreements-gfa.

[29] Companion note II contains a list of available human rights impact assessments.

50. Large enterprises may be able to do so on their own, but collective approaches are more cost effective, especially for business enterprises in the same industry, where they often have the same suppliers.[30] A critical aspect is to ensure that the cascading is not done as a way to shift or limit responsibility, for example by shifting the responsibility to auditors.

51. Going beyond tier one may also involve identifying choke points or control points in the supply chains and assessing how well they are doing due diligence upstream, for example, smelters buying minerals or cotton traders buying cotton bales.

52. New technology also offers the promise of innovative solutions for improving the way human rights impacts are tracked down the supply chain. Significant innovations involve technology to enable workers' voices to be heard, which can enhance both due diligence and remediation approaches, including in supply chains. Collaborative initiatives are also being explored in several sectors to use blockchain technology to monitor impacts at all nodes in the supply chain. At the same time, when using technology, due consideration needs to be given to the risks of undermining good practice.

4. Building and exercising leverage

53. As part of applying due diligence throughout the value chain, business enterprises should convey an expectation that impacts will be prevented and addressed through human rights due diligence wherever relevant across business relationships. This can include requiring or setting incentives for immediate or tier-one business partners to carry out human rights due diligence and to cascade it through their own supply chains. Things go wrong even when good systems are in place, however. Gaining and seeking to exercise leverage becomes fundamental to human rights due diligence good practice when a company identifies adverse human rights impacts which are linked to its operations, products or services and caused by an entity with which it has a business relationship, for example, subsidiaries, suppliers, buyers, distributors, Governments or joint-venture partners.

54. Building and exercising leverage in business relationships to end and mitigate human rights abuse presents a range of practical dilemmas. Experiences suggest that leverage can be exercised in several different ways, both through traditional commercial levers, such as contracts, and through unilateral or collective engagement. The possibility of disengagement is a key aspect. The Guiding Principles clarify that ultimately a business relationship may have to be terminated if efforts to exercise leverage aimed at addressing an adverse human rights impact prove unsuccessful. Emerging practice suggests that it is most effective to be clear about the possibility of disengagement upfront when entering into new business relationships should adverse human rights impacts be identified and unaddressed. As with other business decisions, exercising human rights due diligence on potential disengagement is another critical aspect of good practice.[31]

5. Addressing systemic issues

55. Business enterprises are not expected to solve every development problem that they encounter. That would neither be reasonable nor possible, and is not what is implied in the Guiding Principles. However, business enterprises need to demonstrate that they exercise due diligence to address potential and actual impacts linked to their operations to the maximum of their ability.

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[30] See, for example, http://www.responsiblebusiness.org/.

[31] See https://www.somo.nl/should-i-stay-or-should-i-go-2/.

56. Mitigating human rights impacts in complex contexts typically involves a need to look at root causes. Some business platforms suggest that addressing root causes is the next frontier for business, and that it often requires businesses to work together. Building collective leverage is the rationale behind a range of industry and multi-stakeholder initiatives oriented to business-related human rights impacts. The question about how effective multi-stakeholder initiatives have been in practice is a recurring theme,[32] however, and in general there is a need to strengthen alignment with the Guiding Principles, accountability and grievance mechanisms.

57. Participation in such initiatives can constitute part of the human rights due diligence approach, but it does not change the responsibility of an enterprise when it is causing or contributing to adverse impacts. Moreover, for such participation to constitute part of the due diligence approach, it should be used as a way to gain leverage for addressing adverse impacts.

58. Noteworthy examples involving collaboration and partnerships between stakeholders that address specific and complex issues in supply chains and include accountability mechanisms in their design are the Accord on Fire and Building Safety in Bangladesh, established to create safe working conditions in the country's garment sector, and initiatives to achieve living wages for workers in various sectors, for example, the Action, Collaboration, Transformation (ACT) initiative[33] and Malawi Tea 2020.[34] Other partnerships that address systemic issues include initiatives to achieve responsible recruitment of migrant workers,[35] access to remedy for victims of forced labour,[36] protection and support for human rights defenders through multi-stakeholder collaboration[37] and responsible mineral sourcing that involves investor engagement.

6. Using human rights due diligence as an entry point for contributing to the Sustainable Development Goals

59. Business strategies to contribute to the Sustainable Development Goals are no substitute for human rights due diligence. On the contrary, robust human rights due diligence enables and contributes to sustainable development. For businesses, the most powerful contribution to sustainable development is to embed respect for human rights in their activities and across their value chains, addressing harm done to people and focusing on the potential and actual impacts — as opposed to starting at the other end, where there are the greatest opportunities for positive contribution.[38] In other words, businesses need to realize and accept that not having negative impacts is a minimum expectation and a positive contribution to the Goals.

60. Some business leaders and investors are recognizing that connection, and several case studies are under way on how human rights due diligence by business

[32] Institute for Multi-stakeholder Initiative (MSI) Integrity and the Duke Human Rights Center at the Kenan Institute for Ethics, "The new regulators? Assessing the landscape of multi-stakeholder initiatives: findings from a database of transnational standard-setting multi-stakeholder initiatives", June 2017.

[33] See https://actonlivingwages.com/.

[34] See http://www.malawitea2020.com/.

[35] See, for example, https://www.ihrb.org/employerpays/leadership-group-for-responsible-recruitment.

[36] See https://www.issarainstitute.org/.

[37] See https://www.creer-ihrb.org/lideresydefensores.

[38] See the 10 key recommendations of the Working Group on the connection between the Guiding Principles and the Goals, https://www.ohchr.org/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf. See also https://www.business-humanrights.org/en/civil-society-urges-businesses-govts-to-put-human-rights-at-core-of-implementation-of-un-sustainable-development-goals#c162595.

enterprises is contributing to the Goals.[39] This provides a good starting point going forward.

C. Addressing market and governance failures

61. In the consultations conducted for the present report, government and investor pressure were highlighted as the two strongest drivers of corporate human rights due diligence; for some, another driver was entanglement in human rights crises.

62. Legislation, economic incentives and State leadership, for example, through procurement, economic support and the work of State-owned enterprises, were highlighted as drivers coming from government action. These levers need to be reinforced in order to reach a tipping point in the uptake by mainstream businesses and to address the market and governance failures highlighted in the present report. Legislation and adequate enforcement, in line with international standards, would also contribute to creating a level playing field and implementing good governance overall.

1. Government action

63. It is the job of Governments to address governance gaps and market failures. As clarified in the Guiding Principles, the international human rights obligations of States include a duty to protect people against human rights abuse by business enterprises. States have a range of levers that they can and should use: policy tools and frameworks, legislation, regulation and adjudication, as well as various economic incentives, provision of guidance and promotion of multi-stakeholder dialogue.

64. A key aspect of fulfilling that duty is to use available regulatory levers. Recent developments show that action is possible.

Strengthening implementation of the duty to protect human rights

65. Addressing gaps in how host States fulfil their duty to protect human rights is a fundamental issue for addressing business-related human rights abuse. The implementation of international human rights standards — including standards of the International Labour Organization — through consistent legislation and enforcement is critical. The lack of capacity and effective institutions is a major issue that needs to be addressed, including through international support. However, a lot can be achieved if there is political will to address practices that are harming people and undermining sustainable development. Examples of positive regulatory and policy developments include:[40]

(a) Programme of the Democratic Republic of the Congo on supply chain transparency for minerals originating from artisanal mining;[41]

(b) Ministerial Regulation No. 2/2017 of Indonesia, which created a certification mechanism to ensure that the fishing industry was free from human rights violations;[42]

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[39] See, for example, www.shiftproject.org/sdgs.

[40] Another example concerns the "dirty list" introduced by Brazil that disclosed companies caught using slave labour in their supply chains and banned them from government contracts and services. Enforcement in recent years has been hampered, however, and should be reinvigorated. See the country visit report of the Working Group, A/HRC/32/45/Add.1.

[41] See https://www.radiookapi.net/2017/06/20/actualite/economie/la-rdc-lance-son-initiative-pour-la-tracabilite-de-lor-artisanal-itoa.

[42] See https://www.business-humanrights.org/sites/default/files/documents/FIHRRST-Jan-2017.pdf.

(c) Backing by the Government of China of industry-focused initiatives to promote due diligence in supply chains, for example in information and communications technology, aviation, mineral sourcing, natural rubber sourcing and the textile and apparel sector.[43]

66. Such developments should be more widely pursued. They should also be mapped more systematically and lessons learned should be shared widely.

Creating due diligence incentives through legislation

67. Laws help to set clear expectations for businesses, and recent legal developments are contributing to the integration of corporate human rights due diligence expectations into national laws.[44] The most notable development is the law introduced in France in 2017 which imposes on French business enterprises above a certain size a duty to be vigilant in order to prevent environmental and human rights harm caused by their subsidiaries and through their business relationships.[45] The first of its kind, it requires enterprises across sectors to develop and implement a vigilance plan and account for how they identify, prevent and address human rights impacts in their global operations. Despite limitations, including the limited number of enterprises covered by the law, it is a welcome development that other Governments should learn from. A legal initiative on mandatory human rights due diligence in Switzerland is currently also being considered by the Swiss Parliament. If adopted, it would be another positive development.

68. Recent regulations in the European Union also include provisions for creating incentives to exercise human rights due diligence, namely:

(a) Directive on disclosure of non-financial information by certain large business enterprises in the European Union, requiring the enterprises covered to report publicly on their policies, due diligence procedures, principal risks and management of those risks, including risks to human rights;

(b) Mandatory due diligence for European Union importers of raw minerals and metals, requiring the exercise of human rights due diligence in line with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Enforcement is left to the European Union member States to carry out.

69. The Government of Germany is taking an interesting approach that involves the possibility of legislation if businesses do not take steps to meet the expectations set forth in the Guiding Principles. In its national action plan, it committed to considering mandatory requirements if at least 50 per cent of German business enterprises with more than 500 employees failed to put policies and processes in place to conduct human rights due diligence by 2020.

70. There have also been some important legal developments with regard to addressing the specific challenge of forced labour and trafficking as well as child labour in business activities and supply chains, namely:[46]

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[43] These initiatives were discussed at the 2017 Forum on Business and Human Rights (A/HRC/38/49). See also, for example, the "Chinese due diligence guidelines for responsible mineral supply chains" and the initiative concerning apparel supply chains, http://mneguidelines.oecd.org/cntac-oecd-partner-to-strengthen-cooperation-textile-apparel-supply-chains.htm.

[44] One platform monitoring such developments is the Business and Human Rights in Law website, http://www.bhrinlaw.org/.

[45] Available at https://www.legifrance.gouv.fr/eli/loi/2017/3/27/2017-399/jo/texte.

[46] A different legal tool is provided by the United States Trade Facilitation and Trade Enforcement Act of 2015, which allows customs authorities to restrict the import of goods produced using forced labour.

(a) The Modern Slavery Act 2015 of the United Kingdom, which requires business enterprises that conduct business in the country and have an annual turnover of £36 million or more to report on steps taken to ensure that there is no forced labour and trafficking in their supply chains and their own activities. In spite of important limitations, including a lack of sanctions, failure to connect compliance with the law with awarding of public procurement contracting and the lack of a central registry, the law is part of overall positive developments;

(b) The California Transparency in Supply Chains Act of 2010, which requires affected business enterprises conducting business in California to report to the public on their efforts to "eradicate slavery and human trafficking from [their] direct supply chain for tangible goods offered for sale";

(c) The child labour due diligence law of the Netherlands (pending senate approval and expected to enter into force in 2020), which requires companies to determine whether child labour exists in their supply chains and set out a plan of action on how to combat it.

71. A modern slavery act was expected to be passed in Australia by the federal parliament in the second half of 2018. Among the features of the proposed law tabled by the Government were mandatory requirements for enterprises of a certain size to report on how they manage modern slavery risks in their operations and supply chains, and a proposal that the Government lead by example by publishing an annual consolidated statement covering Commonwealth procurement. A similar bill was passed in the State of New South Wales in June 2018.

72. While it is too early to assess the impacts on the ground of the legal developments addressed above, two effects in particular can be highlighted:

(a) Legislation is helping to raise awareness of the corporate responsibility to respect human rights at the decision-making level within business enterprises. With the explicit requirement that board members need to validate such responsibilities, human rights due diligence has been elevated on the agenda of boards of directors and the executive as well as among critical functions such as legal departments;

(b) While the existing legislation applies only directly to larger companies, obligations are being cascaded down value chains through business-to-business pressure. Anecdotal evidence suggests that those developments make it easier for business enterprises covered by the laws to raise the need for human rights due diligence in partnerships with government entities, such as in joint ventures and with State-owned enterprises.

73. The most important element when considering legislation on human rights due diligence or disclosure is to build on the Guiding Principles and minimize any differences. Other elements to consider when exploring such legislation include how to promote:

(a) Meaningful disclosure by creating incentives to provide information about processes for managing and addressing actual and potential impacts on workers and communities;[47]

(b) Processes for enabling transparency and follow-up on disclosed information;

[47] For a discussion of the outstanding challenges related to mandatory disclosure, see the report of Amnesty International and the Business and Human Rights Resource Centre, *Creating a Paradigm Shift: Legal Solutions to Improve Access to Remedy for Corporate Human Rights Abuse*.

(c) Robust human rights due diligence as opposed to "tick box" approaches, as prevention and implementation must be the end goal;

(d) Coverage of public procurement, given the scale of supply chains involving the Government in any given country;

(e) The right balance between confidentiality issues (with regard to legitimate commercial considerations and stakeholder security concerns) and the need for greater transparency, disclosing sufficient information to fulfil the corporate responsibility to respect human rights;

(f) Carefully targeted use of strict liability concepts which make appropriate use of evidence of adequate due diligence as possible legal defence to encourage robust human rights due diligence processes (see A/HRC/38/20/Add.2).

74. Targeted measures to address specific human rights challenges such as forced labour in supply chains may be necessary. At the same time, both Governments and business enterprises need to make sure that a focus on one particular challenge is not done at the cost of other significant issues. Smart and effective legislation[48] needs to be mindful of potential risks, such as:

(a) Not only covering the largest corporations, since the responsibility to respect applies to business enterprises of all sizes and since both large and small enterprises can have adverse impacts on human rights;

(b) Not letting non-compliant enterprises go without consequences and thereby creating unfair burdens for enterprises that meet expectations: two key elements include the need for Governments to follow-up on any issues and for enterprises to suffer consequences for non-compliance;

(c) Approaches that are too rigid and prescriptive and fail to take into account that there is no one-size-fits-all formula;

(d) Regulatory incoherence across jurisdictions, since all legal developments aimed at promoting human rights due diligence should be aligned with the Guiding Principles. Pioneering Governments have an opportunity to play a leadership role in collective action and the coordination of efforts across jurisdictions to ensure that business enterprises meet unified expectations. Such coordination is also important in order to promote a level playing field for businesses falling under jurisdictions with higher standards for human rights due diligence and avoid "de-risking", where business enterprises avoid investing in high-risk contexts.

75. Efforts to promote better preventive approaches also need to be accompanied by legal developments to strengthen access to remedy through both judicial and non-judicial measures, such as through national contact points.[49] This could contribute to enhancing incentives to exercise proper human rights due diligence, as the costs to businesses for negative impacts on people would become clearer.

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[48] The European Coalition for Corporate Justice has proposed a set of key features of effective human rights due diligence legislation, see http://corporatejustice.org/news/6133-eccj-publishes-key-features-of-mandatory-human-rights-due-diligence-legislation?platform=hootsuite.

[49] See the Working Group report A/72/162 and the reports of the accountability and remedy project of OHCHR on enhancing effectiveness of both judicial and non-judicial mechanisms in cases of business-related human rights abuse, https://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx. In the following reports, OHCHR highlights the need for human rights due diligence concepts to be properly integrated into relevant national law regimes: A/HRC/32/19, A/HRC/32/19/Corr.1 and A/HRC/32/19/Add.1. In a follow-up report (A/HRC/38/20/Add.2), OHCHR clarifies that it is possible to develop legal regimes in which the failure to carry out human rights due diligence may be the basis for a legal action without necessarily having to prove that harm resulted from the lack of due diligence.

76. When strengthening the connection between human rights due diligence and legal liability, there are a number of strategies that States could adopt. The Office of the United Nations High Commissioner for Human Rights (OHCHR) underlines in a report (A/HRC/38/20/Add.2) that efforts should be informed by clear policy aims and adopt a careful approach that creates incentives for business enterprises to exercise robust due diligence and strikes a balance "between legal certainty and providing businesses with flexibility in how they design their human rights due diligence processes". The report also highlights the need to build the capacity of judges to use human rights due diligence concepts more liberally and effectively in determinations of liability, such as in tort cases, which would provide a powerful incentive for companies to do human rights due diligence properly.

77. Business enterprises and associations have emphasized the limitations of developing human rights due diligence legislation.[50] These concerns are legitimate, but do not negate the imperative for Governments to take steps to close governance gaps, including through legal means. When considering the most effective approaches, States may learn from both legislative and enforcement efforts in other fields, such as anti-bribery and environmental protection (see Working Group report A/HRC/35/33), where business enterprises have been able to adjust to the implementation of laws concerning corporate responsibility expectations. Generally, business actors are not opposed to legislation when it helps to level the playing field and provides predictability.

78. While legislative advances need to be built upon and expanded, there are limits to what laws alone can achieve in the short term. Other approaches need to be pursued simultaneously.

Leveraging the role of the State as an economic actor

79. Guiding Principle 4 clarifies that States are expected to "take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State or that receive substantial support and services from State agencies, such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence".

80. The Working Group has taken stock of practice and ways forward in this area in previous reports. In its report on State-owned enterprises (A/HRC/32/45), the Working Group highlighted the good practices of some Governments and State-owned enterprises and called on State-owned enterprises to lead by example. Building on existing good practice models, Governments should require that State-owned enterprises conduct human rights due diligence in their own operations and require the same from business partners both at home and abroad. As part of such efforts, Governments should require systematic and meaningful reporting on environmental, social and governance factors that include human rights — building on progress made in environmental, social and governance and human rights reporting requirements that are already emerging across jurisdictions.

81. As highlighted in the Working Group's report submitted to the Human Rights Council at its the thirty-eighth session (A/HRC/38/48), States can also use economic incentives to drive the application of human rights due diligence. They should make government support for trade and investment, such as export credits, conditional on corporate respect for human rights. In addition to export credits, there is a range of additional services that States can provide to export-oriented companies, including

[50] See the submission by the International Organisation of Employers, https://www.ohchr.org/Documents/Issues/Business/WGSubmissions/2018/IOE.pdf.

participation in trade missions, trade advocacy, general guidance on exporting into foreign markets, embassy services in overseas markets and training and other resources. The Working Group identified emerging practices in this field, but stressed that much more needs to be done. The existing practice shows that it is an area where progress could be achieved in the short term if there is political will.

82. Guiding Principle 6 clarifies that States should also "promote respect for human rights by business enterprises with which they conduct commercial transactions", not least through their procurement activities. Given the scale of public procurement, it provides one of the most significant means for States to fulfil their duty to protect human rights in a business context by creating incentives to exercise human rights due diligence through the awarding of public contracts. In spite of slow progress overall and a need to undertake both legal reforms and strengthen policy coherence in general, good practices are emerging.[51]

83. States should come together and strengthen collaboration and convergence in this area. For example, in its 2016 recommendation on human rights and business, the Council of Europe recognized this need, calling on member States to promote human rights due diligence when States own or control business enterprises, grant substantial support and deliver services to or conduct commercial transactions with business enterprises. The recommendation also called on member States to "provide for adequate consequences if such respect for human rights is not honoured".[52]

Promoting policy coherence, guidance and collaborative approaches

84. Besides public law and administrative measures, there are a number of other policy levers that States should use. Key functions for State action to drive stronger uptake of human rights due diligence in business practice include:

(a) *Promoting policy coherence*. The lack of policy coherence between governmental departments and agencies that shape business practice and the human rights obligations of the State is a significant gap. A good starting point, however, is that this is increasingly being recognized by most Governments, including in the growing number of national action plans. Closing the gap in policy coherence should be a key issue in the implementation of existing action plans and for the next generation of such plans. Key points of action should be for Governments to lead by example on human rights due diligence and address issues identified in the present report for making progress on the uptake of human rights due diligence in wider business practices;

(b) *Providing guidance*. States should play a leading role in translating international due diligence guidance into the national language and providing guidance tailored to the local context. In an emerging market context, for example, the Government of China is backing several industry-focused initiatives to promote due diligence in supply chains. Governments and public bodies can also provide guidance for boards of directors on their human rights responsibilities.[53] In addition,

[51] See, for example, the International Learning Lab on Public Procurement and Human Rights, http://www.hrprocurementlab.org/. One example involving the use of sanctions is the procurement agency of Chile (ChileCompra), which bans companies from doing business with government entities if found to be engaged in anti-union practices: http://www.chilecompra.cl/category/centro-de-documentacion/normativa/proveedores-inhabilitados-para-contratar/.

[52] See https://edoc.coe.int/en/fundamental-freedoms/7302-human-rights-and-business-recommendation-cmrec20163-of-the-committee-of-ministers-to-member-states.html.

[53] One example is the guide of the Equality and Human Rights Commission of the United Kingdom containing five steps that boards should follow to satisfy themselves that their companies are managing human rights impacts: https://www.equalityhumanrights.com/sites/default/files/business_and_human_rights_web.pdf.

States need to play an active role in supporting the development of guidance for small and medium-sized enterprises on the human rights due diligence that they need to undertake;

(c) *Facilitating peer learning and multi-stakeholder platforms for human rights due diligence*. The processes in national action plans that involve relevant stakeholders, including affected communities and workers, human rights defenders, civil society organizations and business enterprises and associations, provide platforms for national dialogue on the business-related risks to human rights and ways to strengthen human rights due diligence in general. In order to facilitate awareness-raising and greater understanding of the human rights risks facing specific sectors, Governments should also support sector-focused platforms. For example, in the Netherlands, the Ministry of Foreign Affairs and the Ministry of Economic Affairs and Climate Policy have facilitated a process to engage Dutch business sectors in developing sector-based covenants to address "corporate social responsibility" risks involving internationally operating companies.[54] The covenants that have been signed by business enterprises to date, for example, for the garment and textile sector, banking sector, gold sector, food products sector and insurance sector, have been developed through multi-stakeholder dialogue between sector associations, member companies, the Government, trade unions and civil society organizations. While evaluation of the Dutch agreements is still pending, the overall approach is innovative and could be more widely explored. Key factors for success include benchmarking against the Guiding Principles, multi-stakeholder negotiations to help to build broad understanding of the Guiding Principles in practice, resources for capacity-building, mechanisms for monitoring and accountability and a stick-and-carrot approach to cover enterprises that are initially unaware of or unwilling to meet the corporate responsibility to respect. In order to address the latter aspect, Governments can play a stronger role in pushing national employer organizations and industry and sector associations to engage.

2. Investor leverage

85. Investors can play a significant role in driving wider uptake of human rights due diligence approaches by setting expectations and interacting with the boards and senior executives of the enterprises they invest in.

86. Increasingly, investors are asking questions about human rights policies and human rights due diligence in line with the Guiding Principles. This practice has moved beyond the niche realm of socially responsible investors to become part of a wider trend of greater focus on managing the social impact of business and integrating environmental, social and governance considerations into mainstream investment decision-making. It is increasingly being recognized that proper human rights due diligence and the integration of human rights risks improve risk management overall — and are good for both people and investments.

87. This is a welcome development, and the Working Group is encouraged by the efforts of initiatives such as the Investor Alliance for Human Rights, a collective action platform connecting institutional investors representing $2 trillion with tools and strategies to promote corporate respect for human rights.[55] The Working Group is also encouraged by the alignment of the Principles for Responsible Investment with the Guiding Principles, which are used in the former as a framework for engagement. For example, the Principles for Responsible Investment notes in a report that when extractive sector companies are engaged, "it is helpful to point towards good practice

[54] See https://www.imvoconvenanten.nl/?sc_lang=en.

[55] For an overview of how investors engage on human rights, see https://www.ohchr.org/Documents/Issues/Business/WGSubmissions/2018/InvestorAlliance.pdf.

in the areas of governance and embedding human rights, human rights risk assessment, stakeholder engagement and grievance mechanisms. All are increasingly becoming part of what constitutes common good practice in the extractive sector".[56]

88. The Principles for Responsible Investment and investors have also highlighted the Guiding Principles Reporting Framework as a useful tool for investors to better assess how well business enterprises understand and manage their human rights impacts.

89. An increasing number of investors rightly acknowledge that they have their own responsibility to respect human rights. Like any other business, investors may cause or contribute to adverse impacts and may be connected to a host of adverse human rights impacts through their investments in companies across industries or sectors and regions. The Guiding Principles clarify that investors, as part of their own human rights due diligence, should use their leverage to seek to prevent and mitigate potential and actual adverse impacts.

90. Initiatives to assist investors in assessing the human rights performance of companies[57] and integrating human rights assessments into the evaluations done by agencies that rate environmental, social and governance and sustainability factors, are helping to drive this trend. Going forward, the Working Group encourages further efforts to:

(a) Scale up the integration of human rights risk management and engagement as part of mainstream investment decision-making and environmental, social and governance assessments, building on the recent developments of integrating environmental risk management into investment practice, which has happened at a much greater speed;[58]

(b) Build on developments in increasing the environmental, social and governance requirements set by stock exchanges, which is happening across a number of jurisdictions, including in emerging markets,[59] to systematically integrate human rights due diligence as part of such requirements. The Sustainable Stock Exchanges Initiative can play a key role in such efforts;

(c) Involve investors and stock exchanges in national action plan processes;

(d) Systematically promote the Guiding Principles as the globally agreed standard to complement the OECD guidance on responsible business conduct for institutional investors;

(e) Promote coordination and common understanding among investors, rating agencies and environmental, social and governance researchers in order to develop more coherent approaches that: (a) enable a better understanding of how business enterprises are managing human rights impacts in practice, and (b) drive more effective due diligence rather than "tick box" approaches and formulaic answers;

(f) Promote the understanding among investors that the purpose of human rights risk management is to prevent and address risks to people — not risks to the investment.

[56] Principles for Responsible Investment, "Human rights and the extractive industry: why engage, who to engage, how to engage", 2018.

[57] See, for example, the Corporate Human Rights Benchmark and the Guiding Principles Reporting Framework.

[58] See https://www.unpri.org/academic-research/a-just-transition-integrating-the-social-dimension-into-climate-strategies/3202.article.

[59] See https://www.shiftproject.org/media/resources/docs/Shift_updatecorplawproject_2013.pdf.

91. Progress in this area should also be supported by efforts to develop better metrics and indicators for evaluating performance of human rights due diligence. The Working Group welcomes efforts under way to address this challenge, including:

(a) The work of the Global Reporting Initiative to align with the Guiding Principles, including the change in recent years of its definition of materiality to incorporate the concept of impacts and align it with the Principles. The Initiative has established a technical committee on human rights disclosure to explore further alignment, including how best to report on management approaches to due diligence. As the Initiative provides the most widely used non-financial reporting framework, this process holds great potential;

(b) Work to explore the close relationship between integrated reporting and reporting in line with the Guiding Principles;[60]

(c) A project by the non-profit organization Shift, in partnership with the Centre for Human Rights at the University of Pretoria, the Association of Southeast Asian Nations (ASEAN) CSR Network and the Polish Institute for Human Rights and Business, to develop better ways of using information, metrics and indicators to evaluate respect for human rights by businesses.[61]

V. Conclusions and recommendations

A. Conclusions

92. **Corporate human rights due diligence has become a norm of expected conduct for all business enterprises. A small group of early adopters are showing the way and good practices are building up. Considerable efforts are still needed, however, as the majority of business enterprises around the world remain unaware, unable or unwilling to implement human rights due diligence as required of them in order to meet their responsibility to respect human rights. The fundamental challenge going forward is to scale up the good practices that are emerging and address remaining gaps and challenges. That will require concerted efforts by all actors. Evidence of what constitute some of the strongest drivers for changing business practice beyond the pioneers suggests that investors and Governments have a key role to play. For Governments in particular, addressing and closing market and governance failures is an inherent part of their duties.**

B. Recommendations

93. **The Working Group recommends that States use all available levers to address market failures and governance gaps to advance corporate human rights due diligence as part of standard business practice, ensuring alignment with the Guiding Principles, including by:**

(a) **Using legislation to create incentives to exercise due diligence, including through mandatory requirements, while taking into account elements to drive effective implementation by businesses and promote level playing fields;**

(b) **Using their role as economic actors to advance human rights due diligence, including by integrating human rights due diligence into the**

[60] See https://www.ungpreporting.org/resources/the-ungp-reporting-framework-and-integrated-reporting/.

[61] See https://www.shiftproject.org/resources/collaborations/valuing-respect/.

operations of State-owned enterprises and agencies that promote trade and investment, and into public procurement;

(c) Promoting greater policy coherence within Governments, including by adopting or strengthening the implementation of national action plans on business and human rights;

(d) Providing guidance to business enterprises, including small and medium-sized enterprises, on human rights due diligence tailored to local contexts;

(e) Facilitating multi-stakeholder platforms to promote dialogue on business-related risks to human rights, ways to address them and to strengthen monitoring and accountability, including in a sector context.

94. **The Working Group recommends that business enterprises:**

(a) If they have already adopted human rights due diligence policies and processes based on the Guiding Principles, continue on the journey and seek to continuously enhance approaches by engaging with affected stakeholders, civil society organizations, human rights defenders and unions and by being transparent about the management of potential and actual impacts;

(b) If they have not yet implemented human rights due diligence approaches, just get started, including by assessing their potential and actual impacts on human rights, assessing where existing processes fall short and developing an action plan for putting in place human rights due diligence procedures for their own activities and value chains, in line with the Guiding Principles, including by learning from good practices emerging in their own industry and in other sectors;

(c) Consider collective leverage approaches, especially when faced with systemic human rights issues.

95. **The Working Group recommends that entities in the investment community implement human rights due diligence as part of their own responsibility under the Guiding Principles, more systematically require effective human rights due diligence by the companies they invest in and coordinate with other organizations and platforms to ensure alignment and meaningful engagement with companies.**

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Right to food

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on the right to food, Hilal Elver, submitted pursuant to Assembly resolution 72/173.

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Interim report of the Special Rapporteur on the right to food

I. Introduction

A. Recognizing the right to food of agricultural workers

1. Agricultural workers play a critical role in achieving food security and fulfilling the universal human right to adequate food. They are, however, among the most food insecure, facing formidable barriers to the realization of their right to food, often working without labour and employment protections and under dangerous conditions. Despite this vulnerability to food insecurity and human rights violations, the right to food of agricultural workers has not been sufficiently addressed.

2. International human rights law recognizes the interdependence among the rights to decent work, adequate living conditions, social protections and the right to food, as outlined in article 25 of the Universal Declaration of Human Rights and article 11 of the International Covenant on Economic, Social, and Cultural Rights. The present report is aimed at protecting and promoting the right to food of agricultural workers by identifying barriers to the realization of that right and making concrete recommendations to States and relevant stakeholders.

3. Agricultural workers comprise approximately one third of the world's workforce, or 1.3 billion people.[1] Currently, 70 per cent of workers in developed countries are employed in agriculture, compared with only 16 per cent in upper-middle-income countries.[2] Many workers are employed either informally (for example, without a contractual agreement to guarantee a fair wage, safe working conditions, available remedies, etc.) or, as in the case of family members, without any financial compensation. The number of jobs in agriculture is steadily declining owing to mechanization, modernization and the impact of globalization on food systems, yet the uncertain nature of agricultural work and financial instability of workers require increased attention.

4. The present report addresses the rights of agricultural workers on a global scale. The definition of agricultural worker used in the report is "any person hired to work in agriculture regardless of their contract type or payment arrangement". This definition encompasses workers in plantations, greenhouses, crop fields, orchards, packing houses, slaughterhouses and livestock facilities. The definition includes workers who respond to fluctuating labour demands, not necessarily in line with natural seasons, and men, women and children who support family members working in agriculture.[3] A separate report scheduled for presentation to the Human Rights Council in March 2019 will focus on the distinctive challenges to realizing the right to food of workers in the fishing industry.

5. In the report, particular attention is drawn to the dangerous working conditions inherent in the agricultural sector, which not only threaten the lives of agricultural workers, but also undermine their right to food. The agricultural sector is among the most dangerous industries owing to regular exposure to pesticides and to long hours spent in extreme temperatures without adequate access to water (see A/HRC/34/48). The majority of agricultural workers are excluded from national legal protective frameworks, leaving them unable to exercise their fundamental rights to associate or

[1] International Labour Organization (ILO), "Agriculture: a dangerous work", available at www.ilo.org/safework/areasofwork/hazardous-work/WCMS_110188/lang--en/index.htm.

[2] ILO, *World Employment and Social Outlook: Trends 2018* (Geneva, 2018).

[3] Lydia Medland, "Misconceiving 'seasons' in global food systems: the case of the EU seasonal workers directive", *European Law Journal*, vol. 23, Nos. 3–4 (October 2017).

assemble and without access to remedies.[4] The report takes a comprehensive look at these challenges that undermine the ability of agricultural workers to realize the right to food.

6. The realization of the right to adequate food of agricultural workers who are faced with precarious and vulnerable conditions requires urgent actions by States in the fulfilment of their human rights obligations. The report outlines the obligations of States to respect, protect and fulfil the human rights of agricultural workers, including the rights to a living wage, decent and safe working conditions and peaceful assembly and association. It also explores the role of the State in regulating the private sector, as well as the role of businesses and consumers in promoting the rights of supply chain workers. Lastly, the report provides a set of recommendations to States and other stakeholders on how to improve the human rights situation of agricultural workers, with a focus on their right to food in a rapidly changing global food system.

B. Changing the global food system and its impacts on agricultural workers

7. Food systems encompass the environment, people, inputs, processes, infrastructures, institutions, laws, policies and activities that relate to the production, processing, distribution and transportation, preparation, consumption and disposal of food, and the outputs of those activities, including socioeconomic and environmental outcomes.[5] As stated in an earlier report of the Special Rapporteur, the industrial food system currently dominates the world and focuses on increasing food production and maximizing efficiency at the lowest possible economic cost. (A/71/282, para. 22). This system often prioritizes cost-saving initiatives and economic outputs at the expense of agricultural workers.[6] As a result, agricultural workers are increasingly faced with low wages, part-time work, informality, dangerous working conditions and a lack of social and economic protections.

8. As part of the new global food system, global supply chains have surged tremendously in recent decades, fuelling 80 per cent of world trade and 60 per cent of global production. Agricultural supply chains encompass a system of activities, organizations, actors, technology, information, resources and services involved in agrifood production for consumer markets.[7] These chains include upstream and downstream sectors, starting with the supply of agricultural inputs (such as seeds, fertilizers, pesticides, feeds, medicines or equipment) to production, post-harvest handling, processing, transportation, marketing, distribution and retailing.[8]

9. Global supply chains are funded largely by foreign direct investment from multinational enterprises in wholly owned subsidiaries or in joint ventures in which the enterprises, in principle, have direct responsibility for the employment relationship.[9] In addition to multinational enterprises, and local parent companies and their affiliates, supply chains feature a wide range of enterprises, including smallholders, farmers' organizations, State-owned enterprises and funds, private

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[4] ILO, *Giving a Voice to Rural Workers*, ILC.104/III/1B (Geneva, 2015).

[5] High-Level Panel of Experts on Food Security and Nutrition, *Nutrition and Food Systems: A Report by the High-Level Panel of Experts on Food Security and Nutrition of the Committee on World Food Security* (Rome, 2017), p. 11.

[6] Tim Lang and Michael Heasman, *Food Wars: The Global Battle for Mouths, Minds and Markets* (New York, Taylor and Francis, 2004).

[7] ILO, *Decent Work in Global Supply Chains*, ILC.105/IV (Geneva, 2015).

[8] Organization for Economic Cooperation and Development (OECD) and Food and Agriculture Organization of the United Nations (FAO), *OECD-FAO Guidance for Responsible Agricultural Supply Chains* (Paris, 2016).

[9] ILO, Decent Work in Global Supply Chains.

financial actors and private foundations. It is important to recall the implementation of the principles for responsible investment in agriculture and food systems, which favour employment generation and foster decent work.[10]

10. Global supply chains offer an important source of employment: the International Labour Organization (ILO) estimates that the number of jobs in global supply chains, including in agriculture, increased from 295 million in 1995 to 453 million in 2013.[11] Yet, they are often criticized for enabling slavery-like conditions for workers. Within supply chains, corporations can avoid accountability for violations of workers' rights resulting from the actions of those extraterritorial suppliers that are only contractually related to corporations.[12] This poses a real threat to workers, as nearly half of the world's largest companies directly employ only 6 per cent of their supply chain workers; the remaining 94 per cent of labourers are considered to be part of the hidden workforce of global production without clear employment contracts and without well-defined rights or protections.[13]

II. Barriers to achieving the right to food for agricultural workers

A. Right to a living wage

11. The realization of the right to food of workers requires the guarantee of a living wage, understood as a fundamental right for workers to afford their basic needs and those of their family, namely, food, clothing, housing, education and health care. It also requires the elimination of poverty and the removal of its root causes, as well as the improvement of other working and living conditions.

1. Wages and contracts

12. Agricultural wages are generally low and paid late and are not periodically adjusted. Practices such as debt bondage based on wage advances and excessive charges for services in worksites further decrease workers' earnings. Many agricultural workers and their families live in geographically isolated rural areas owing to the location of their workplace. As such, workers become dependent on employers to provide adequate wages sufficient to support the food security and nutrition of their families and to provide access to housing, schools, medical facilities and transportation.

13. In rural areas of disadvantaged developing countries, nearly 8 out of 10 working poor earn less than $1.25 per day.[14] Agricultural workers in Zambia, for example, work for less than $2 a day on third-party farms. The dependence on farm owners for work opportunities perpetuates generational cycles of poverty (A/HRC/37/61/Add.1, para. 106). Studies of agricultural workers in El Ejido, southern Spain, indicate that

[10] Committee on World Food Security, "Principles for responsible investment in agriculture and food systems", 2014.

[11] ILO, *World Employment and Social Outlook 2015: The Changing Nature of Jobs* (Geneva, 2015).

[12] Tomaso Ferrando, "About capitalism and private international law", in Horatia Muir Watt and others, eds., *Adjudication Without Frontiers: The Global Turn in Private International Law* (Aldershot, United Kingdom of Great Britain and Northern Ireland, Edward Edgar Publishing, 2018), pp. 229–235.

[13] International Trade Union Federation, "Scandal: inside the global supply chains of 50 top companies", 2016.

[14] Sisay Yeshanew, *Assessment of International Labour Standards that Apply to Rural Employment*, FAO Legal Papers, No. 100 (Rome, FAO, 2016), p. 1.

workers who migrate to semi-urban areas in search of waged employment must rely on low wages similar to workers in rural settings.[15]

14. While ILO promotes minimum wages to protect workers from exploitation, workers without well-defined contracts lack minimum protections and mechanisms for resolving disputes if employers violate minimum wage agreements. These workers also lack a fiduciary relationship with or do not even know the identity of employers. A study in Guatemala, for example, showed that 55 per cent of the agricultural workers interviewed did not know the name of their employer.[16]

15. Even with a State-endorsed minimum wage, States have not adopted and enforced uniform wage standards across sectors that are sufficient to guarantee a living wage for workers.[17] Studies from Australia, Canada, the United Kingdom of Great Britain and Northern Ireland and the United States of America indicate that national Governments regularly fail to effectively and consistently address violations of the minimum wage.[18] In Brazil, 43 per cent of the nation's cases of modern slavery involve agricultural work and in Morocco, the minimum agricultural wage is less effective in protecting workers than it is for other sectors.[19]

2. Working hours and quotas

16. Agricultural workers work long, unrestricted hours and the intensity of their labour allows for few, if any, opportunities for rest. During times of planting and harvesting, field work may last from early morning until late at night, further inhibiting workers from gaining access to social and health-care services available only during working hours.[20]

17. Workers are often "paid by piece", namely, payment depends on the number of buckets or bags harvested, and they must meet quotas unilaterally imposed by employers in order to earn a decent wage. As quotas generally exceed the capacity of work reasonably performed in a day, workers work continuously and avoid taking food and water breaks. Further, without a set salary, workers are not ensured a living wage and therefore are not guaranteed the right to adequate living standards or to adequate food. Lastly, quota-based wages incentivize exploitative conditions for workers and their family members, often women and children. In order to meet quotas within the specified time frame and maximize income, workers are likely to extend their hours, and unpaid family members might be used to supplement their efforts.[21] Such contributions are common on palm oil and coffee plantations, where a "free"

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[15] Medland, "Misconceiving seasons in global food systems".

[16] See www.albedrio.org/htm/otrosdocs/comunicados/InformeGrupoAnalisisTrabajoAgricola2014.pdf, input received in response to the call for submissions.

[17] Peter Hurst, Paola Termine and Marilee Karl, *Agricultural Workers and Their Contribution to Sustainable Agriculture and Rural Development* (Geneva, FAO, ILO and International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations, 2007).

[18] Manoj Dias-Abey, "Justice on our fields: can 'alt-labour organizations improve migrant farm workers' conditions?", *Harvard Civil Rights-Civil Liberties Review*, vol. 53, No. 1 (2018).

[19] Julia Dolce, "43% da nova 'lista suja' do trabalho escravo é do agronegócio", *Brasil de Fato*, 12 April 2018.

[20] Norwegian Centre for Human Rights and Institute for Economic, Social and Cultural Rights, *Palm Oil Industry and Human Rights: A Case Study on Oil Palm Corporations in Central Kalimantan* (2015), p. 69.

[21] FIAN International, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations, and Right to Food Campaign in India and Paschim Banga Khet Majoor Samity, *A Life Without Dignity: The Price of Your Cup of Tea — Abuses and Violations of Human Rights in Tea Plantations in India* (Heidelberg, Germany, Global Network for the Right to Food and Nutrition, 2016).

and informal labour source of women and children supporting workers is often uncompensated and unprotected.

3. Informality

18. The term "informal economy" refers to "all economic activities by workers and economic units that are — in law or in practice — not covered or insufficiently covered by formal arrangements".[22] Informal workers, referenced above, are covered by fewer protections and face higher risks of poverty than those employed in the formal economy.[23] The agricultural sector features the highest level of informal employment, ranging from 60 per cent to 90 per cent globally.[24] Informal and casual work arrangements (for example, part-time, short-term or temporary contracts, on-call schedules, multi-layered subcontracts or franchises, and self-employment schemes, etc.) further hinder opportunities for workers to form unions and establish bargaining power (A/71/385, para. 23). In assessing these realities, average conditions can be misleading if not adjusted to account for variations in national circumstances.

4. Limited collective bargaining

19. Despite the high level of ratification of the ILO Convention on the Rights of Association and Combination of Agricultural Workers, 1921 (2011), agricultural workers face barriers to exercising their right to freedom of association. Consequently, collective bargaining in agriculture is quite limited. Agricultural workers lack opportunities to form trade unions owing to legal restrictions and hostile employers and because the labour force is geographically isolated, dispersed and often informal. Instead, agricultural workers rely on minimum legal protections and enforcement mechanisms that are weak or non-existent.

20. Anti-union sentiment and incidents of violence, including the harassment and dismissals of union officials and members, are prevalent throughout global supply chains and further discourage workers from exercising their right to the freedom of association. Without assembly and association rights, workers are hindered from collectively advocating for the working conditions necessary to realize their right to food.

5. Lack of social protection

21. Approximately 20 per cent of agricultural workers have access to basic social protections, which include access to social security, health care and workers' compensation.[25] Under international human rights law, States must establish social protections against the risk of poverty caused by sickness, disability, maternity leave, employment injury, unemployment, age, death of a family member and health-care or child-care costs.[26] Still, the vast majority of agricultural workers lack such basic protections. Realizing the right to food for agricultural workers requires a reversal of this trend and an expansion of social services to protect against general poverty and social exclusion. Again, these concerns must be appraised within the more specific context of national and even subnational circumstances to better understand the scope of challenges facing the agricultural workforce.

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[22] ILO, *Women and Men in the Informal Economy: A Statistical Picture*, 3rd ed. (Geneva, ILO, 2018).

[23] ILO, *Transitioning from the Informal to the Formal Economy*, ILC.103/V/1 (Geneva, 2014)

[24] ILO, *World Employment and Social Outlook*.

[25] FAO, "Understanding decent rural employment", 2015.

[26] Magdalena Sepúlveda and Carly Nyst, Ministry for Foreign Affairs of Finland, *The Human Rights Approach to Social Protection* (Oulu, Erweko Oy, 2012).

B. Working conditions and health hazards

22. Agricultural work is often excluded from national occupational safety and health regulations even though it is among the most dangerous sectors. An average of 170,000 agricultural workers are killed at work annually and agricultural workers are twice as likely to experience a fatal workplace accident compared with workers in other sectors. The palm oil, sugar cane, beef and dairy industries are considered to be among the most dangerous for workers. The risk of accidents is increased by fatigue, poorly designed tools, difficult terrain, exposure to extreme weather conditions and poor general health associated with working and living in remote communities.

23. Studies suggest that, owing to the high level of informality, an estimated 26,000 fatal accidents in the agricultural and fishing supply chains are unreported each year, along with other incidents of injury and occupational illness.[27] Even within the formal economy, States are not adequately enforcing minimum standards of occupational health and safety. In Guatemala, for instance, 96 per cent of workers stated that they were exposed to constant danger, 92 per cent stated that they lacked necessary protective equipment and only 3 per cent reported having access to a first aid kit.[28] Given that agricultural workers often lack social protections, including health care, workers' compensation, long-term disability insurance and survivors' benefits, losing a family member or income-generating employment to such accidents may propel agricultural workers and their families into deep poverty and prevent them from realizing their right to food.[29]

1. Pesticides

24. Agricultural workers are exposed to toxic pesticides via spray, drift or direct contact with treated crops or soil, from accidental spills or owing to inadequate personal protective equipment (A/HRC/34/48, para. 15). Annual acute pesticide poisoning affects nearly 1 in every 5,000 agricultural workers in developed countries. (ibid., para. 16). The United Nations Children's Fund (UNICEF) reported that exposure to pesticides is an especially grave health concern for pregnant and nursing workers, as well as their children.[30] Particularly in developed countries, exposure to dangerous machinery, pesticide residue and other agrochemicals can cause serious injury to workers and their families who live on or near worksites, as workers carry pesticide residues on their skin, clothing and shoes. Poor enforcement of labour regulations and lack of health and safety training can elevate exposure risks, especially in developing countries, which lack the infrastructure and resources to adequately regulate and monitor pesticides.

2. Water and sanitation

25. Agricultural workers frequently do not have access to safe drinking water in their workplaces, nor are they guaranteed access to sanitary facilities in violation of their human rights. For example, 60 per cent of all women working in sub-Saharan Africa and South Asia work in the agriculture sector and most lack access to facilities in the workplace that allow them to manage their sanitation and menstruation (A/HRC/33/49, para. 52).

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[27] See https://engagethechain.org/working-conditions-and-livelihoods.

[28] See www.albedrio.org/htm/otrosdocs/comunicados/InformeGrupoAnalisisTrabajoAgricola2014.pdf, input received in response to the call for submissions.

[29] Sue Longley, "Agricultural workers still struggle for their rights", Grain, 14 January 2010.

[30] United Nations Children's Fund (UNICEF), "Palm oil and children in Indonesia: exploring the sector's impact on children", October 2016, p. 7.

26. Lack of access to drinking water is particularly detrimental given the exposure of agricultural workers to prolonged heat and sun.[31] Heat stroke is the leading cause of work-related death in the United States, yet there is no universal requirement to establish water and shade breaks for agricultural workers. Without taking sufficient water or sun breaks, workers face heat-related illnesses such as nausea, dizziness, heat exhaustion, heat stroke, dehydration and even death. In the sugar cane industry, for example, cutters exposed to long hours in hot temperatures have experienced unusually high rates of deadly kidney failure.

III. Protection of agricultural workers under international law

27. Labour rights and human rights are interdependent, indivisible and mutually inclusive. The full enjoyment of human rights and labour rights for agricultural workers is a necessary precondition for the realization of the right to food. The Special Rapporteur reiterates the indivisibility of all human rights and echoes the statement made by the Special Rapporteur on the rights to freedom of peaceful assembly and of association: "Labour rights are human rights, and the ability to exercise those rights in the workplace is a prerequisite for workers to enjoy a broad range of other rights" (A/71/385, para. 17).

28. Agricultural workers are protected by all relevant human rights laws, principles and standards as rights holders and are also entitled to additional protections as members of a workforce. As mentioned above, the full enjoyment of human rights and labour rights for agricultural workers is a necessary precondition for the realization of the right to food.

A. International human rights law and standards

29. States bear the primary duty to respect, protect and promote the right to food of agricultural workers under international human rights law. Article 25 of the Universal Declaration of Human Rights is an umbrella principle obligating States to ensure the realization of the right to an adequate standard of living for all. This right is further articulated in article 11 of the International Covenant on Economic, Social and Cultural Rights, which provides that the right to an adequate standard of living includes the right to food, clothing and housing, as well as the continuous improvement of living conditions. In general comment No. 12 of the Committee on Economic, Social and Cultural Rights, it is explained that the right to food must not be construed in a narrow or restrictive sense, in accordance with the understanding that other human rights, including the right to an adequate standard of living, are inseparable from the right to food.

30. Member States of the Food and Agriculture Organization of the United Nations (FAO) have adopted the *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security* (2004). These guidelines provide non-binding guidance for States on operationalizing the right to food and promoting State action in the realm of a human rights approach to food security. With respect to workers, Guideline No. 8A elaborates on the already defined responsibility of States to ensure an adequate standard of living for rural and urban wage earners and their families. The Guideline also recommends that State-imposed working conditions be consistent with international human rights laws and relevant ILO conventions.

[31] FIAN International, *A Life Without Dignity*.

31. Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights also delegate to States the responsibility to establish a minimum wage that is a "living wage", namely, an income allowing workers to support themselves and their families. As previously mentioned, however, the majority of agricultural workers do not earn a living wage sufficient to ensure food security and an adequate standard of living. Further, article 9 of the International Covenant and general comment No. 19 of the Committee on Economic, Social and Cultural Rights define parameters of the right to social security and the extent of the obligations of States in fulfilling that right. As indicated in the present report, social protection is vitally important for agricultural workers, yet few such workers are included in social security systems.

32. Article 12 of the International Covenant on Economic, Social and Cultural Rights provides for the right to the highest attainable standard of health and obligates States to take measures to improve environmental and industrial hygiene. In general comment No. 14 (2000) on the right to health, the Committee embraced the notion that the right extends to the underlying determinants of health, including adequate food, potable water and safe working conditions. States also have an obligation to ensure a healthy and safe workplace, including in the agricultural sector, by preventing and reducing exposure to harmful substances and hazards.

33. Lastly, the General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9) have recognized the role of States in ensuring the rights to water and sanitation. In its general comment No. 15 (2002), the Committee clarified that the human right to water means universal access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses, which includes sanitation. Even when working in remote locations, agricultural workers are entitled to and must be afforded water and sanitation facilities consistent with international standards.

B. International labour law

34. ILO is the only tripartite agency in the United Nations common system, comprised of representatives from governments, trade unions and employers' organizations, all of whom have voting rights. While there are eight core ILO conventions that address the fundamental rights of workers,[32] ILO adopted the Declaration on Fundamental Principles and Rights at Work in 1998, which consolidated four of the core conventions. States that decide to ratify this declaration, its underlying conventions or other ILO conventions must enact the agreement as national law. ILO recognizes the particular challenges facing rural workers, especially in respect of freedom of association for agricultural workers. The Right of Association (Agriculture) Convention, 1921 (No. 11) states that each Member of ILO that ratifies the Convention undertakes to secure to all those engaged in agriculture the same rights of association and combination as to industrial workers, and to repeal any statutory or other provisions restricting such rights in the case of those engaged in agriculture.

35. Convention No. 11 was the first in a series of instruments developed and adopted by ILO to tackle the rights and decent work deficits of rural workers, again with a specific focus on rural workers. The others include: Minimum Wage Fixing

[32] Forced Labour Convention, 1930 (No. 29) and Protocol of 2014, Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), Right to Organize and Collective Bargaining Convention, 1949 (No. 98), Equal Remuneration Convention, 1951 (No. 100), Abolition of Forced Labour Convention, 1957 (No. 105), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Minimum Age Convention, 1973 (No. 138), Worst Forms of Child Labour Convention, 1999 (No. 182).

Machinery (Agriculture) Convention, 1951 (No. 99) and recommendation No. 89; Plantations Convention, 1958 (No. 110) and recommendation No. 110; Protocol of 1982 to the Plantations Convention, 1958 (No. 110); Labour Inspection (Agriculture) Convention, 1969 (No. 129); Rural Workers' Organisations Convention, 1975 (No. 141) and recommendation No. 149; Indigenous and Tribal Peoples Convention, 1989 (No. 169) and recommendation No. 104 (1957); Safety and Health in Agriculture Convention, 2001 (No. 184) and recommendation No. 192; Work in Fishing Convention, 2007 (No. 188) and recommendation No. 199. ILO also has a series of guidance notes that cover the implementation of the above-listed issues.[33]

36. ILO conventions must operate in conjunction with human rights instruments in order to ensure the broadest protections for workers. For example, Safety and Health in Agriculture Convention, 2001 (No. 184) clearly excludes work associated with the processing of agricultural raw materials and the exploitation of forests and does not include all categories of agricultural workers. However, the human right to just and favourable conditions of work, including safe and healthy working conditions, encompasses all workers and activities.

C. Specially protected groups

1. Women

37. Women and girls play an essential role in providing food and nutrition security for their families and communities. Many countries are experiencing a "feminization of agriculture", as women are increasingly left to carry the full burden of agricultural work in addition to their load of unpaid care responsibilities at home (see A/HRC/26/39). Unfortunately, women working in the agricultural sector face heightened risks of exploitation and targeted discrimination that threaten to undermine their rights and those of their children. In an effort to curb gender-based discrimination against women, international human rights law has set forth specific legal protections that States should adopt to improve the conditions of women working in the agricultural sector.

38. Articles 11 and 12 of the Convention on the Elimination of All Forms of Discrimination against Women address women's right to protection of health and to safety, including safeguards for reproduction, and call for special protections for pregnant women and mothers. In addition, the Committee on the Elimination of Discrimination against Women calls upon States to take appropriate measures to provide special protection to women during pregnancy. Such obligations clearly extend to minimizing risks of maternal exposure to hazards in the workplace.

39. Even States that have adopted the Convention on the Elimination of All Forms of Discrimination against Women, however, have not necessarily provided the requisite legal protections for women workers, particularly those who are pregnant or have recently had children, and who are exposed to dangerous working conditions and societal biases (see A/HRC/26/39). Owing to discriminatory hiring practices, for example, women often hide their pregnancies or are hired only for short-term contracts, as employers want to avoid paying maternity benefits (see A/71/282). According to information received, in India, for instance, female agricultural workers on tea plantations continue performing the same tasks until the eighth month of pregnancy, as their wages are reduced if they do not meet their quotas.[34]

[33] See the ILO Declaration on Fundamental Principles and Rights at Work (1998).

[34] See FIAN International's response to the Special Rapporteur questionnaire on agricultural workers, p. 3. All questionnaire responses are available at www.ohchr.org/EN/Issues/Food/Pages/AgriculturalWorkers.aspx.

40. Despite the Convention's call for reduced exposure to hazardous conditions in the workplace, women working in agriculture are frequently exposed to toxic chemical pesticides, many of which increase the risk of spontaneous abortions and premature births. These chemicals may also affect infant development through in utero exposure and breast milk. Studies indicate that breast milk may improve the resiliency of children who have been exposed to pesticide residues in vitro, yet owing to the remoteness of many plantations, in conjunction with long working hours and poor infrastructure, women workers are challenged to find time to breastfeed children.[35] Many women also lack access to nutritious food and an understanding of nutritional needs, both for themselves, and their children.[36] Private sector pressures further complicate efforts to educate women about the benefit of breastfeeding.

41. The recently adopted recommendation No. 34 of the Committee on the Elimination of Discrimination against Women contains specific interpretations in respect of the rights of rural women workers and a series of key recommendations.[37]

42. Ensuring that women have an opportunity to exercise collective bargaining rights may significantly resolve these issues. A project of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations undertaken in 16 African countries, for example, successfully demonstrated that when women are given the opportunity to participate in unions and to engage with employers and Government stakeholders, they can effectively advocate for maternity rights and protections from violence and sexual harassment at work.[38]

2. Children

43. According to the latest ILO estimates, 71 per cent of child labour (involving 108 million children) occurs in the broader agricultural sector, which includes farming, fisheries, aquaculture, livestock and forestry.[39] Due to insufficient risk prevention and control measures as well as their physical and mental development stages, children are particularly vulnerable to the dangers of agricultural work. Repetitive heavy lifting, for example, can cause permanent spine or limb damage, and exposure to pesticides can cause skin, eye, respiratory and neurological issues. Children are also more susceptible to the effects of hot temperatures and long hours, especially without regular access to adequate food and water.

44. Child labour in itself is a human rights violation, but it is also a symptom and a self-reinforcing cause of poverty. Children's right to food can be undermined through exploitative working conditions for parents, especially mothers, such as in relation to low wages, long working hours, lack of maternity protection and breastfeeding support, as well as poor water, sanitation and hygiene standards in workers' communities.

45. Many existing policies often fail to include targeted protections for children, as they are an informal and often invisible component of the workforce. The international community, however, has established specific protections for children through human rights instruments and labour laws. The Convention on the Rights of the Child contains several provisions that are particularly relevant for children working in the agricultural sector, as it recognizes "the right of every child to a

[35] See International Baby Food Action Network response to questionnaire.

[36] UNICEF, "Palm oil and children in Indonesia", p. 7.

[37] See Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016) on the rights of rural women.

[38] Celia Mather, "From Lusaka to Accra: more women, doing more, building our unions — achievements of the IUF Africa Regional Women's Project, 2007–2011", May 2012.

[39] ILO, *Global Estimates of Child Labour: Results and Trends, 2012–2016* (Geneva, 2017), p. 12.

standard of living adequate for the child's physical, mental, spiritual, moral and social development". States are tasked with assisting parents to execute those rights by providing "material assistance and support programmes particularly with regard to nutrition, clothing and housing" (art. 27).

46. Article 6 of the Convention on the Rights of the Child also includes provisions to support healthy childhood development. Article 24 (2) (c) reiterates the link between the rights to food and water and the right to the highest attainable standard of health. States must protect children against disease and malnutrition through the provision of adequate, nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution. Further, article 32 assigns the State the responsibility to provide protection for children from economic exploitation.

47. ILO also developed the Minimum Age Convention, 1973 (No. 138), which reflects the recognition that, while work performed by children younger than 18 may jeopardize health, safety and morals, light work that does not harm health or schoolwork is allowed for children ages 13 to 15. The Worst Forms of Child Labour Convention, 1999 (No. 182) of ILO further requires ratifying countries to take immediate action to prohibit and eliminate the worst forms of child labour, including all forms of slavery, commercial sexual exploitation of children and any work that by its nature is harmful to the health, safety or morals of children, and challenges all countries to live up to those standards.

48. Despite the existence of these international standards, children continue to experience food insecurity resulting directly from conditions imposed on them as workers or as a result of the hardships facing family members who work in the agricultural sector. In 2015, for example, the United States Department of Labor reported that there were more than 2 million child labourers in Côte d'Ivoire and Ghana employed in cocoa production. As previously discussed, children of agricultural workers earning quota-based wages may also informally engage in labour in order to help support their families. In rural areas, where seasonal work dictates the availability of adult labourers, children may drop out of school to help their parents work on third-party or family-owned farms or plantations or to pursue other income-generating activities.

49. A lack of maternity protections and breastfeeding support for working mothers, as well as poor water, sanitation and hygiene standards in workers' communities, further undermine the health and well-being of children. On tea plantations in Assam, India, for example, children of women agricultural workers often depend on food rations provided by tea gardens or government schemes, which are insufficient to cover the nutritional needs of workers' families, leading to high incidents of malnutrition and anaemia among children.[40]

3. Plantation workers

50. Plantation workers perform some of the most physically demanding labour, generally cultivating monocultures that are sold for commercial purposes. Many plantations embrace exploitative conditions endemic to colonial agricultural systems. Workers, most of whom are employed informally, live with their families on the plantations and rely on employers for basic services, including health care and education. While the lack of formal employment limits the availability of information about such workers, evidence suggests that there is an increased use of migrant and outsourced workers, particularly for seasonal work.[41] The rate of informal and

[40] See UNICEF response to questionnaire.

[41] FIAN International's response to the Special Rapporteur questionnaire on agricultural workers.

seasonal employment on plantations is disproportionately high among women, who face an increased risk of discrimination and harassment in the workplace. The lack of formal employment may also result in exclusion from those statutory benefits that are available only to formal employees, such as access to employer-sponsored health care and maternity protection.[42]

51. ILO has detailed regulatory guidance on the rights of plantation workers. The Plantations Convention, 1958 (No. 110) and recommendation No. 110 (1958) and the Protocol of 1982 to the Plantations Convention, 1958 (No. 110) provide standards for employment contracts, minimum wages, holidays with pay, weekly rest, maternity protection, workmen's compensation, the right to organize and collective bargaining, labour inspection, housing and medical care for plantation workers. However, only 12 States have ratified those documents, and plantation workers continue to face persistent violations of their labour and human rights.

52. States have also been complicit in the exploitation of and violence against plantation workers. In 2007, for example, Chiquita Brands International, a United States-based corporation, admitted to paying $1.7 million to Colombia's paramilitary group, the United Self-Defence Forces of Colombia, to kill or intimidate union members seeking to promote collective bargaining among Chiquita workers on banana plantations. A more recent study from 2016 alleged that Uzbekistan sponsored the use of forced labour on cotton plantations throughout its territory.[43]

4. Migrant and undocumented workers

53. ILO estimates that there are 150.3 million migrant workers: 112.3 million of these workers are in high-income countries in the Global North and many are irregular or undocumented.[44] Developed countries and international organizations, such as the World Bank, encourage the migration of agricultural workers from the developing countries as a mode of development, although evidence indicates that bilateral arrangements and protection mechanisms are not effective.

54. In fact, migrant workers in all regions tend to face more severe economic exploitation and social exclusion than other agricultural workers, as they lack the fundamental protections provided to citizens. Many migrants experience conditions of forced and unpaid labour, restricted freedom of movement and limited access to justice. Employers are also more likely to consider migrant workers as a disposable, low-wage workforce, without rights to bargain collectively for improved wages and working conditions (see A/71/385).

55. Under international human rights law, the International Convention on the Rights of All Migrant Workers and Members of Their Families and other instruments contain provisions that require States to provide adequate protection, information and remedies in the context of safe working conditions. Nevertheless, evidence indicates that States often fall short of fulfilling those duties. In Europe, for example, undocumented migrant workers are often denied, or receive restricted, residence or work permits, leading workers to be subjected to irregular recruitment procedures.[45]

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[42] ILO, *Meeting of Experts on Violence against Women and Men in the World of Work: Background Paper for Discussion at the Meeting of Experts on Violence against Women and Men in the World of Work* (Geneva, 2016).

[43] Radio Free Europe/Radio Liberty, "Forced cotton-picking earns Uzbekistan shameful spot in 'slavery index'", 31 May 2016.

[44] ILO, *ILO Global Estimates on Migrant Workers: Results and Methodology* (Geneva, 2015). The term "irregular" refers to the status of migrants who enter or stay in a country without correct legal authorization.

[45] See submission from Via Campesina in Europe, available at www.eurovia.org/wp-content/uploads/2017/04/ECVC-2017-04-Document-on-Migration-and-Rural-Labour-EN.pdf.

56. In southern Italy, exploitation of migrant workers connected to *caporalato*, a gangmaster system in which migrant workers are illegally recruited and subjected to slavery-like conditions, has gained recent attention.[46] Responding to pressure from civil society, the Government of Italy has enacted a law against *caporalato* (Law No. 199/2016), which imposes sanctions on both the gangmasters who "trade" migrant workers and those who benefit from the labour. This law still falls short of ensuring the rights and protections of migrant workers.

57. In the United States, where many farmworkers are undocumented, there is no effective government remedy for most human rights violations.[47] Undocumented workers fear coming forward, as the threat of deportation surpasses concerns about fundamental rights. Yet, even with legal status, many workers participating in temporary or seasonal migration lack the opportunity to exercise their rights to assembly and association and are dependent upon employers to protect and promote their basic rights.[48]

58. Seasonal migration schemes promoted by the International Organization for Migration, and used in Southern Europe, further expose migrant workers to unfair working conditions and potential rights violations.[49] For example, in order to restrict the mobility of migrant workers and prevent permanent migration to Spain, Andalusian employers give work preference to Moroccan women who have dependent children, as their status as mothers is considered a guarantee that they will return home after each season.[50]

59. There is a need for greater attention to patterns of trafficking and forced labour of migrant workers. The link between exploitation and migration is often overlooked or is considered integral to industry and thus culturally accepted and politically ignored. For example, the dependence of the sugar industry in the Dominican Republic on illegally imported labour from Haiti, including child labourers and migrants entering the country through the Barahona region of the Dominican Republic, is widely known yet allowed to continue.[51]

[46] See Medici per i Diritti Umani, "I dannati della terra: rapporto sulle condizioni di vita e di lavoro dei braccianti stranieri nella Piana di Gioia Tauro", public report, available at www.mediciperidirittiumani.org/dannati-della-terra/.

[47] Tamar Haspel, "Illegal immigrants help fuel U.S. farms. Does affordable produce depend on them?", *Washington Post*, 17 March 2017.

[48] International Federation for Human Rights, *Importing Workers, Exporting Strawberries: Working Conditions on Strawberry Farms in the Huelva Province* (Spain), No. 578a (January 2012); Susan G. Mannon and others, "Keeping them in their place: migrant women workers in Spain's strawberry industry", *International Journal of Sociology of Agriculture and Food*, vol. 19, No. 1 (September 2011).

[49] For more information on seasonal migration schemes, see, for example, Sara Dehm, "Framing international migration", *London Review of International Law*, vol. 3, No. 1 (March 2015). See also Jesse Jon Gerom and Manoha Sharma, *Maximizing the Development Impacts from Temporary Migration: Recommendations for Australia's Seasonal Work Programme* (Washington, D.C., World Bank, 2017) (identifying additional opportunities for Australia to improve its seasonal work arrangement with neighbouring Pacific islands).

[50] Emmanuelle Hellio, "'We do not have women in boxes': channelling seasonal mobility of female farmworkers between Morocco and Andalusia", in Jörg Gertel and Sarah Ruth Sippel, eds., *Seasonal Workers in Mediterranean Agriculture: The Social Costs of Eating Fresh* (New York, Routledge, 2014).

[51] Glenn T. Smucker and Gerald F. Murray, *The Uses of Children: A Study of Trafficking in Haitian Children* (Port-au-Prince, United States Agency for International Development/Haiti Mission, 2004).

5. Other specifically protected groups

60. Indigenous peoples, as well as peasants and other rural workers, are also afforded specific protections under international human rights and labour law. The International Covenant on Civil and Political Rights, the United Nations Declaration on the Rights of Indigenous Peoples and the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of ILO address the rights of indigenous peoples, and the draft Declaration on the Rights of Peasants and other People Working in Rural Areas provide further protection to supplement other international instruments emphasizing peasants. These groups are among the diverse agricultural workforce that faces challenges in fulfilling the right to food for reasons discussed in the present report.

IV. The State and the protection of the right to food of agricultural workers

A. Regulation

61. State regulatory responsibility includes adopting laws to protect the rights of workers and adopting corrective measures when existing laws have an adverse impact on those rights. In addition to complying with minimum working standards primarily set forth in ILO instruments, States must better exercise their duty to protect and promote the rights of agricultural workers as a precondition to securing the right to food. This can be achieved through national legislation, policies, and programmes, that are consistent with international human rights laws and labour conventions or otherwise endorse the underlying principles.

62. It is the duty, as mentioned above, of the State to ensure that a minimum wage is set in legislation and that compliance with this requirement is adequately monitored. That minimum wage should be, at the least, a "living wage".

63. The potential for inconsistent or contrary national legislation to undermine international standards is apparent in the context of women. Despite specific protections applicable to women working in agriculture, a lack of local and national protections continues to expose women to rights violations in the workplace. For example, while international law provides some protections for working mothers regardless of the sector, in francophone Africa, including Burkina Faso, Gabon and the Niger, most women agricultural workers are not covered by the national legislation that provides maternity protection at work.[52]

64. A lack of policies and programmes to combat cultural biases and violence against women in the workplace is also preventing women from the full enjoyment of their rights. Women are often without suitable protective equipment, and gender-based violence at work is pervasive in the agricultural sector. Women workers, particularly those without permanent legal status, are less likely to seek protections by joining unions or to report incidents of sexual abuse or violence.[53]

65. Nevertheless, there is evidence to confirm that national efforts can have a meaningful impact on the lives and rights of workers. In Costa Rica, for example, the national strategic plan to eradicate child labour has contributed to a decrease in child labour since 2011. Costa Rica also attributes this trend to the efficient coordination

[52] Alison Linnecar and others, *Formula for Disaster: Weighing the Impact of Formula Feeding vs Breastfeeding on the Environment* (International Baby Food Action Network and Breastfeeding Promotion-Asia Network of India, 2014).

[53] Human Rights Watch, *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment* (2012), p. 84.

of efforts by a series of relevant ministries and other actors, including trade unions, and non-governmental organizations.[54]

B. Monitoring compliance regarding working conditions

66. The obligation of States to ensure free and fair labour practices includes the development of labour policies, laws and regulations, as well as inspection and enforcement mechanisms, in consultation with workers, employers, and their organizations.

67. National labour legislation is only as effective as the enforcement mechanisms that States employ to ensure compliance with minimum standards. Labour Inspection (Agriculture) Convention, 1969 (No. 129) of ILO requires Governments to establish an inspection system that includes a requirement to notify competent authorities of any gaps in protection and to make proposals for bridging those gaps. States are lagging behind with respect to the implementation of inspection schemes in the agricultural sector. Convention No. 129, for example, has been ratified by significantly fewer States than Labour Inspection Convention, 1947 (No. 81).

68. In recent years, States have developed laws to monitor child labour and human trafficking in supply chains. For instance, the California Transparency in Supply Chains Act requires companies of a certain size to report on their specific actions to eradicate slavery and human trafficking in their supply chain. Similarly, the Modern Slavery Act 2015 of the United Kingdom requires larger companies to publish a slavery and human trafficking statement for each financial year. Further, producer countries, such as Afghanistan, India and Nepal, have their own local and national laws that prohibit child labour and promote victim rehabilitation efforts.

69. Labour inspectorates often lack the resources to effectively monitor widely dispersed and seasonal worksites, especially in rural areas, and to ensure the protections of a diverse group of workers.[55] In the United States, fewer than 900 investigators are employed to monitor compliance with federal labour laws for more than 150 million workers across the United States — a ratio of approximately one investigator for every 170,000 workers. Without adequate resources to monitor worksites, States are failing to provide workers an essential safeguard.

C. Effective remedies for dispute settlement

70. States are obligated under international law to establish accessible and effective domestic complaint mechanisms that can promptly investigate allegations of abuses of rights that have been unduly restricted or violated. Workers whose rights have been violated have the right to obtain redress, including adequate compensation and sanctions against the employer.

71. Effective remedies should be available from a variety of sources, including judicial and non-judicial and administrative institutions, such as courts, ombudsperson's offices and national human rights institutions. Some States permit workers to seek corrected pay or compensation from an employer before seeking judicial involvement. Other countries provide for workers to seek assistance from an ombudsperson's office or to claim damages in civil proceedings.[56]

[54] See Costa Rica's response to questionnaire.

[55] ILO, *General Survey of the Reports Concerning the Labour Inspection Conventions and Recommendations*, ILC.95/III/1B (Geneva, 2006), para. 13.

[56] See, for example, Costa Rica, Croatia, Greece, and Malta's responses to the Special Rapporteur's questionnaire.

72. Even when States implement mechanisms for resolving disputes, agricultural workers often lack access to effective remedies when their rights are violated. This is due to structural barriers, lack of information, or financial burden of the dispute mechanisms. In India, for example, only Chief Inspectors may file complaints on behalf of tea plantation workers.[57] Neither the plantation worker nor the union may initiate a legal proceeding against a plantation manager who has violated a worker's rights. In Burkina Faso, agricultural workers may appeal rights violations to the National Commission of Human Rights, but there is no State-sponsored mechanism to ensure that workers are aware of and understand the scope of those rights.[58]

73. Informal employment arrangements among agricultural workers further hinder their ability to access available remedies for rights violations. Without employment contracts, informal workers cannot readily prove their employment status and are therefore unable to establish that an employer owed and subsequently breached a fiduciary duty. State inspectorates and authorities may be less likely to investigate potential violations within the informal economy, and workers may hesitate to report violations in order to avoid retaliation by employers or participation in proceedings that interfere with income-generating activities.

74. Irregular and undocumented migrant workers face additional impediments to remedies. Despite having formal access to inspectors, workers are reluctant to report violations for fear of deportation. In addition, migrants tend to lack legal rights or access to temporary accommodations that will allow them to remain in the country during legal proceedings, thus deterring them from reporting violations.

V. Private sector and other actors

75. Corporations participating in global supply chains have a responsibility to respect the right to food of agricultural workers and to not contribute, directly or indirectly, to human rights abuses. Corporations must uphold international labour and human rights standards and ensure that contracting enterprises along the supply chain comply with those standards, even when existing labour laws fail to provide sufficient protections or impose liability. Corporations must also ensure access to appropriate remedies when rights violations occur. These actions are not a substitute for the enforcement of protective regulatory standards by the State, but are nevertheless necessary to the protection and promotion of workers' right to food.

A. Role of the State and extraterritorial obligations

76. In recent years, there have been various attempts to regulate the impacts of business activities on human rights. These efforts have focused on both national activities and those outside the territorial boundaries of the State in which the business or affiliate is domiciled. The scope of a State's human rights obligations has evolved to include authority to exercise jurisdiction over certain activities originating from that State but impacting other States. Thus, in principle, States have the duty to regulate, monitor and investigate the activities of corporations domiciled in their own State and may hold those corporations accountable for human rights violations under national law or through intergovernmental instruments and voluntary codes of conduct. This is particularly relevant for agricultural workers who participate in global supply chains where the jurisdictional lines are often blurred.

[57] FIAN International's response to the Special Rapporteur questionnaire on agricultural workers.
[58] Ibid.

77. Notably, the Guiding Principles on Business and Human Rights (2011) underlined that States "should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations" and clarified the responsibility of transnational corporations and other business enterprises to respect human rights. However, the Guiding Principles are voluntary in nature and do not provide for adequate access to judicial remedies. Other relevant standards include general comment No. 16 (2013) of the Committee on the Rights of the Child and general comment No. 24 (2017) of the Committee on Economic, Social and Cultural Rights, both of which include clearer and more progressive standards on corporate accountability. The Special Rapporteur recognizes that binding regulations are necessary to more effectively hold corporations liable and States accountable when the rights of workers are violated.

78. Currently, it remains a challenge to hold transnational corporations responsible for extraterritorial actions, including those of contracted suppliers. In the United States case *John Doe I and others v. Nestlé, USA and others*, for example, the presiding court did not find sufficient evidence that the defendant companies, Nestlé, Archer Daniels Midland, and Cargill, had aided and abetted child slave labour on the Côte d'Ivoire farms that supplied the companies' cacao beans.[59] Rather, the court's conclusion endorsed the perspective that employing cheap labour is merely a symptom of conducting business within a global supply chain and that the companies had not explicitly directed the use of child labour in violation of any law.

B. Role of corporate social responsibility

79. Some enterprises within agricultural supply chains have adopted corporate social responsibility to claim a commitment to sustainable practices and health and safety standards for workers, but whether they are making serious efforts with regard to implementation requires investigation and validation. In conjunction with social auditing initiatives, corporate social responsibility "comprises a multimillion-dollar industry created by global businesses to monitor compliance with industry human rights standards across supply chains and at the enterprise level" (A/71/385, para. 91). Companies advertise corporate social responsibility as a voluntary decision to exceed the legal requirements of the country in which they operate in order to integrate long-term economic, social and environmental interests into commercial operations. Yet, corporate social responsibility is often more preoccupied with promoting a company's brand image than promoting the rights of workers and may be dangerously misconstrued as a replacement for legally binding regulations and robust enforcement by States.

80. Corporate social responsibility does not create cognizable rights for workers or enforcement mechanisms when rights are violated (see A/71/385). Rather, initiatives often fall short of achieving meaningful changes because of the use of voluntary, non-binding standards, lack of consultation with workers and communities and ambivalence when it comes to implementation. The Roundtable on Sustainable Palm Oil, for example, is lauded for its partnered governance structure and multi-stakeholder approach to integrating environmentally sustainable and socially responsible practices into the palm oil industry.[60] Yet, notably and unacceptably

[59] United States Courts of Appeals for the Ninth Circuit, *John Doe I and others v. Nestlé, USA and others*, Case No. 10-56739, Order and Opinion, 2 December 2013.

[60] Gary D. Paoili and others, "Corporate social responsibility, oil palm and the roundtable on sustainable palm oil: translating boardroom philosophy into conservation action on the ground", *Tropical Conservation Science*, vol. 3, No. 4 (2010).

absent from the list of participating groups are the agricultural workers who are most affected by those practices.

81. Corporate social responsibility models also lack effective auditing mechanisms that would allow for objective third parties to evaluate a company's progress in meeting its goals. While querying the effectiveness of initiatives among multinational tobacco companies, Human Rights Watch found that most companies do not publicly disclose sufficient information to allow for third-party stakeholders to objectively and credibly assess whether a company is exercising due diligence in monitoring and addressing human rights problems within the supply chain.[61]

C. Fair Food Program

82. Agricultural workers are increasingly making their own demands with respect to the operations of corporate supply chains. The Fair Food Program in the United States is a leading example of an alternative model to traditional corporate social responsibility, one that promotes worker-driven social responsibility.[62] Unlike traditional examples, the Fair Food Program ensures that agricultural workers have knowledge of their rights and protections; features reporting mechanisms through which workers may document complaints and seek remedies; conducts third-party audits of agricultural workers; and relies on market-based enforcement to ensure that participating suppliers honour their commitment to fair labour standards. Thus far, the Fair Food Program has successfully empowered participating agricultural workers to advocate on behalf of their own rights, which is essential as the private sector often fails to act on its own.

D. Role of consumers

83. Although it is the primary obligation of States to ensure the realization of the rights of workers, efforts to improve the protections for agricultural workers should take into account the potentially constructive role of consumers. Just as consumer demand for lower prices may perpetuate the violations of labour standards and the ability of workers to earn a living wage, consumers have the ability to use market demands and purchasing power to promote worker protections.[63] A recent Oxfam report, for example, demonstrated how consumer demand for cheap food increases the likelihood that suppliers in supermarket value chains will deprive workers of basic human rights in order to turn a profit.[64]

84. Consumers have also shown a preference for production processes that minimize negative social and ecological impacts and have called for increased transparency. In 2016, the Chief Executive Officer-led Consumer Goods Forum responded to consumer demands for improved working conditions by passing the Social Resolution on Forced Labour, a commitment to fighting forced labour through global supply chains.[65] Emerging fair trade criteria, food justice labelling, and procurement initiatives also demonstrate that consumers are willing to pay higher

[61] Human Rights Watch, *A Bitter Harvest: Child Labour and Human Rights Abuses on Tobacco Farms in Zimbabwe* (2018).

[62] Fair Food Program, "Fair food 2017 annual report", 2018.

[63] Business Humanitarian Forum, "Workshop report: company responsibilities in countries with human rights challenges", February 2011.

[64] Oxfam, *Ripe for Change: Ending Human Suffering in Supermarket Supply Chains* (Oxford, 2018), p. 12.

[65] Consumer Goods Forum, "Fighting forced labour: a rallying call from the consumer goods industry", 14 January 2016.

prices to improve labour conditions in supply chains. Unfortunately, without mandatory requirements to disclose all production practices, including those that are exploitative or otherwise negative, voluntary labels serve more as an opportunity for companies to selectively highlight positive aspects of the value chain than to respond to consumer demands for increased accountability.[66]

85. Perhaps more effective in influencing rights and protections for workers are advocacy campaigns targeting a company's reputation. A company's reputation in a market is a critical piece of its social capital and it ensures a steady flow of investments, a stable customer base and access to other resources and support. Thus, a company's efforts to avoid damage to the brand equity of a business, or "reputational risk", have given rise to codes of labour practice among companies participating in global supply chains. Research on women farmworkers in South Africa, for example, found that civil society activists may leverage threats to expose worker exploitation in order to pressure companies to address workers' rights, particularly those of women and migrant workers.[67]

86. At the same time, States cannot rely exclusively on consumers to expose rights violations or ensure protections of agricultural workers in the supply chain. Instead, States should make a concerted effort to implement measures to ensure that consumers have sufficient opportunity to make informed decisions and to participate in promoting policies that are friendly to human rights within supply chains.

E. Role of international organizations

87. International organizations, including ILO, FAO, UNICEF and the Organization for Economic Cooperation and Development (OECD), have recently focused on increasing visibility into supply chains with the aim of guiding the private sector on how to implement and maintain responsible work practices. In 2016, for example, ILO held the 105th session of the International Labour Conference, a global summit of governments, employers and trade unions, which addressed decent work in global supply chains, culminating in a series of adopted conclusions.[68] These initiatives have garnered private sector interest, but tangible changes in behaviours are yet to be observed.

VI. Conclusion and recommendations

88. **First, the present report presents global issues undermining the full realization of the right to food of agricultural workers. It is imperative to start looking at the issues of agricultural workers, including how their human rights are intrinsically related, from a holistic perspective. It is also important to appreciate that global averages do not account for the variations in material circumstances and living standards that exist among, and within, countries. Therefore, there is a need to supplement global statistics with national, subnational, and possibly regional, measurements.**

89. **Second, it is important to look beyond formalism in appraising global food security and the universal right to food. Formal adoption of international norms**

[66] Tomaso Ferrando, "Certification schemes and labelling as corporate governance: the value of silence", in Grietje Baars and André Spicer, eds., *The Corporation: A Critical Multi-Disciplinary Handbook* (Cambridge University Press, 2017), pp. 372–382.

[67] Stephanie Barrientos, "Corporate purchasing practices in global production networks: a socially contested terrain", *Geoforum*, vol. 44 (January 2013).

[68] ILO, "Fourth item on the agenda: decent work in global supply chains", document ILC.105/PR14-1, 2016.

may not guarantee positive changes on the ground. Rather, norms are often adopted for public relations and reputational reasons and without clear direction for implementation. Nevertheless, constitutional ratification and national legislation may better enable civil society to monitor compliance with underlying norms and principles.

90. Lastly, various international organizations, including FAO, ILO, the Office of the High Commissioner for Human Rights, UNICEF and the World Health Organization, as well as the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations, could, within their specific mandates, improve synergies and coordination to promote the conditions of agricultural workers. Their role in the provision of food security is vital. Therefore, the Special Rapporteur recommends that the above-mentioned actors cooperate to expose problems and provide proposed solutions to States as soon as possible.

1. Major recommendations with specific actions proposed to international organizations:

91. Establish a fact-finding study group including ILO, FAO, relevant civil society organizations and corporate representation to examine whether States are implementing various categories of norms relevant to agricultural workers. The group could present findings to the World Committee on Food Security, the main international platform where policy recommendations and guidance on the status of agricultural workers globally are discussed and endorsed. Particular attention should be paid to the implementation of ratified norms. This group could also consider requesting an advisory opinion from the International Court of Justice on the rights of agricultural workers under international law.

92. International organizations, including ILO, FAO, UNICEF and OECD, should focus on increasing visibility into supply chains and guiding the private sector on how to implement and maintain responsible work practices.

2. States should:

93. Improve human rights protection for informal agricultural workers, especially those in presently vulnerable categories, including: women and girls, members of indigenous groups, peasants, certain minorities suffering discrimination, those living in remote and backward areas, and migratory workers without normal citizenship rights and rule of law protection.

94. Implement binding rules introducing due diligence mechanisms to allow the affected individuals and communities to hold accountable all supply chain enterprises that profit from the human rights abuses.

95. Ratify all ILO conventions relevant to workers in the agricultural and food production sector and ensure their effective implementation.

96. To improve working conditions of agricultural workers, implement the recommendations set out in the earlier report of the Special Rapporteur (A/HRC/34/48) on pesticides and their impact on the right to food. The Special Rapporteur further endorses the recent report entitled "Toward principles on human rights and occupational exposures to hazardous substances" of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak, to be presented at the thirty-ninth regular session of the Human Rights Council, in September 2018.

97. **Set a minimum wage corresponding to a "living wage" for all workers, regardless of the work sector, as required by international human rights standards, and ban piece rate schemes.**

98. **Implement social protection schemes that strengthen the incomes of families throughout the year.**

99. **Guarantee the right to establish and encourage the free functioning of trade unions that facilitate dialogue and cooperation among Governments, employers and workers in the formulation of labour standards and policies, consistent with the principle of tripartism.**

100. **Devote appropriate resources for an effective functioning of labour inspectorates in agriculture, in accordance with the requirements of the ILO Labour Inspection Convention, 1947 (No. 81).**

101. **Provide safe channels for undocumented migrant workers so that they can anonymously report violations without fear of retribution, respecting the principle of non-refoulement and ensuring that migrants have access to the regular labour market in the host country, in cooperation with United Nations agencies and programmes and international organizations.**

102. **Issue more non-restrictive residential and work permits to seasonal workers and condemn seasonal migration schemes that expel workers from countries after the season lapses.**

103. **Collect reliable data on child labour, adopt policies to respond to the root causes of children entering the labour market, and withdraw those children currently working in the worst forms of labour from the workforce.**

104. **Enact, implement and enforce national legislation that addresses structural violence and discrimination against women in the agricultural sector.**

105. **Inform workers of underlying rights and available remedies in case of human rights violation and provide pertinent legal aid.**

106. **Ensure that consumers have the opportunity to make informed decisions about rights violations in supply chains through the use of mandatory labelling systems and, further, to participate in defining relevant policies.**

107. **Adopt and implement upon adoption the draft Declaration on the Rights of Peasants and other People Working in Rural Areas.**

108. **Implement the rules of the Voluntary Guidelines on the Progressive Realization of the Right to Adequate Food in the Context of National Food Security in relation to agricultural workers.**

109. **Ensure that investments in agriculture and food systems are in line with the Principles for Responsible Investment in Agriculture and Food Systems.**

110. **Fulfil their commitments with respect to the Sustainable Development Goals in order to ensure the zero hunger goal as well as the decent work goal for all by 2030.**

3. **Private actors of the agribusiness sector should:**

111. **Ensure that wages and working conditions for agricultural workers improve, rather than deteriorate, as global supply chains continue to expand.**